

EXPLANATORY STATEMENT

Approved by the Australian Communications and Media Authority

Radiocommunications Act 1992

Radiocommunications (Spectrum Licence Allocation – 850/900 MHz Band) Determination 2021

Authority

The Australian Communications and Media Authority (**the ACMA**) has made the *Radiocommunications (Spectrum Licence Allocation – 850/900 MHz Band) Determination 2021* (**the determination**) under sections 60 and 294 of the *Radiocommunications Act 1992* (**the Act**).

Under section 60, the ACMA must determine, in writing, the procedures to be applied in allocating spectrum licences under Subdivision B of Division 1 of Part 3.2 of the Act. Under section 294, the ACMA may make determinations fixing spectrum access charges payable by licensees for issuing spectrum licences and specifying the times when those charges are payable. Provisions of this determination made in reliance on section 60 of the Act are not subject to disallowance (see paragraph 44(2)(b) of the *Legislation Act 2003* (**the LA**) and item 29 in the table at regulation 10 of the *Legislation (Exemptions and Other Matters) Regulation 2015*).

However, provisions of the determination which rely on section 294 of the Act are subject to disallowance and each such provision is identified in the notes at Attachment A. The relevant provisions of the determination that are subject to disallowance are:

- section 10;
- paragraph 28(1)(a);
- paragraph 28(1)(c);
- subsection 28(2);
- paragraph 43(1)(a);
- paragraph 41(1)(c);
- subsection 43(2);
- Division 2 of Part 6;
- clause 17 of Schedule 2;
- clause 18 of Schedule 3;
- clause 7 of Schedule 4;
- clause 8 of Schedule 4;
- paragraph 9(c) of Schedule 4;
- Schedule 5.

All other provisions of the determination are not subject to disallowance. According to the explanatory statement for the *Legislation (Exemption and Other Matters) Regulation 2015* and the explanatory memorandum to the Legislative Instruments Bill 2003, exposure of the determination to disallowance, to the extent it is made under section 60 of the Act, could cause commercial delay or commercial uncertainty.

The determination is subject to the sunset provisions in Part 4 of Chapter 3 of the LA.

Purpose and operation of the determination

The determination sets out the procedures to be applied in allocating spectrum licences in relation to spectrum within the following frequency ranges (collectively, **the 850/900 MHz band**):

- 814 MHz to 825 MHz;
- 859 MHz to 870 MHz;
- 890 MHz to 915 MHz;
- 935 MHz to 960 MHz.

These licences will be allocated in a single auction using the Enhanced Simultaneous Multi-Round Ascending (**ESMRA**) auction format.

The determination also fixes the spectrum access charges payable by the persons to whom such licences are allocated. Throughout the determination, prices and bids are rounded up to the next thousand or rounded to the nearest thousand. This reflects the expected high value of the 850/900 MHz band spectrum.

Background

On 27 October 2020, the then Minister for Communications, Cyber Safety and the Arts made the *Radiocommunications (Spectrum Re-allocation—850/900 MHz Band) Declaration 2020 (the re-allocation declaration)*. The re-allocation declaration provides that the 850/900 MHz band across the majority of Australia, with the exception of the Mid-West Radio Quiet Zone, is subject to re-allocation by issuing spectrum licences.

The ACMA intends to allocate spectrum licences for the 850/900 MHz band in late 2021 (**850/900 MHz band spectrum auction**) by a combination of:

- auctions;
- allocation for a pre-determined price; and
- direct allocation.

The ACMA has made a package of instruments for the 850/900 MHz band spectrum auction, including the determination and the *Radiocommunications Spectrum Marketing Plan (850/900 MHz Band) 2021 (the marketing plan)*.

Spectrum licence limits direction

On 1 August 2021, the Minister for Communications, Urban Infrastructure, Cities and the Arts (**the Minister**) gave the ACMA a direction under subsection 60(10) of the Act, the *Radiocommunications (Spectrum Licence Limits—850/900 MHz Band) Direction 2021 (the spectrum licence limits direction)*. The Minister directed the ACMA to determine allocation procedures under subsection 60(1) of the Act that impose limits (**allocation limits**) on the aggregate of the parts of the spectrum that may be used by a person, or relevant group of persons, as a result of the allocation of spectrum licences. The circumstances and reasons for making the spectrum licence limits direction are set out in the explanatory statement to that direction.

The effect of these allocation limits is that the ACMA must determine allocation procedures that ensure that:

- there is a ‘set-aside’ of 10 MHz of spectrum in part of the 850/900 MHz band (895 to 915 MHz and 940 to 960 MHz) for each of Optus Mobile Pty Limited (ACN 054 365 696) (**Optus**) and TPG Telecom Limited (ACN 096 304 620) (**TPG**), or their relevant associates, if they elect to take it up.
- no person or relevant group of persons may, as a result of the allocation of a spectrum licence that is enabled by the re-allocation declaration, use more than an aggregate of:
 - 82 MHz of the sub-1 GHz band under spectrum licences in an area called the ‘major population area’
 - 92 MHz of the sub-1 GHz band under spectrum licences in an area called the ‘regional area’.

The determination sets out allocation procedures that are consistent with the spectrum licence limits direction. These procedures include a requirement on each applicant to identify any relevant associates and provisions prohibiting the allocation of spectrum that would cause a winning bidder to exceed the allocation limits. These procedures also include requirements on Optus and TPG to elect whether to take up their set-aside spectrum, and preventing any other applicant from acquiring that spectrum if they elect to take up their set-aside spectrum.

Overview

The determination sets out in detail the procedures that will be used to conduct the auction. These procedures include the requirements and responsibilities of applicants, bidders and the ACMA throughout all stages of the allocation process. The determination also sets out rules to deter collusive behaviour, and sets potential consequences for breaching those or other parts of the determination.

The allocation procedures describe the necessary application and registration processes for persons to become eligible to participate and bid for lots in the auction. This process includes the submission of required documentation and the payment of an application fee, as well as the making of an eligibility payment or the provision of a deed of financial security (or both).

Rules governing how applicants can bid on spectrum in the auction are set out in the determination. The ACMA will auction spectrum in the 850/900 MHz band divided into the products described in the marketing plan. Each product is defined by a geographic area and a paired frequency band. There are two geographic areas for products defined in the marketing plan, a ‘major population’ area and a ‘regional’ area. There are three frequency bands for products defined in the marketing plan:

- 814 MHz to 824 MHz and 859 MHz to 869 MHz;
- 890 MHz to 895 MHz and 935 MHz to 940 MHz;
- 895 MHz to 915 MHz and 940 MHz to 960 MHz

Accordingly, there are 6 products available in the auction, each with a unique combination of geographic area and frequency band:

Name	Part of the spectrum	Region
850 major population product	814-824 MHz and 859-869 MHz	Major population area
850 regional product	814-824 MHz and 859-869 MHz	Regional area
900 lower major population product	890-895 MHz and 935-940 MHz	Major population area
900 lower regional product	890-895 MHz and 935-940 MHz	Regional area
900 upper major population product	895-915 MHz and 940-960 MHz	Major population area
900 upper regional product	895-915 MHz and 940-960 MHz	Regional area

Each product is divided into generic paired lots, with each paired lot representing 2 x 5 MHz of the product.

In their application forms, Optus and TPG (each a **set-aside applicant**) may elect to take up both:

- a set-aside lot in the 900 upper major population product; and
- a set-aside lot in the 900 upper regional product.

A set-aside applicant must elect to take up both, or neither, of those set-aside lots. If it takes up the set-aside lots, those lots are allocated to it immediately before the start of the pre-bidding phase, although specific frequencies for the set aside lots will not be assigned until the assignment stage in the auction. There is no scope for a set-aside applicant to change its election, unless the ACMA changes starting prices in the auction.

A part of the 850/900 MHz band is not represented by a product: this is the **downshift spectrum** (824 MHz to 825 MHz and 869 MHz to 870 MHz). The downshift spectrum is divided into two lots, the downshift metropolitan lot (which represents the downshift spectrum in an area called the downshift metropolitan area) and the downshift regional lot (which represents the downshift spectrum in an area called the downshift regional area). The downshift metropolitan lot and the downshift regional lot are not available for bidding in the auction. The downshift metropolitan lot will be directly allocated to the winning bidder for the only lot of the 900 lower major population product, and the downshift regional lot will be directly allocated to the winning bidder for the only lot of the 900 lower regional product.

The auction will be conducted via a secure online system using the ESMRA auction format.

The ESMRA auction for the 850/900 MHz band will be conducted in 3 stages:

1. **Primary stage**—The primary stage consists of a pre-bidding phase, followed by a series of clock rounds for bidding. Before the auction starts, the auction manager enters into the auction system the provisional start demands and provisional minimum spectrum requirements (**MSR**) for each product, as recorded in the register of bidders. During the pre-bidding phase, bidders may confirm or change their provisional start demands and provisional MSRs in the auction system.

The clock rounds progress according to a clock function. All products are offered simultaneously for bidding during these rounds. In each round, bidders indicate their demand for generic lots of each product. A bid is a request to maintain a bidder's demand, or change its demand at a particular price point. In each clock round, bidders may make one bid per available product. Therefore, in the first round, bidders indicate whether they wish to change their demand as nominated in the pre-bidding phase, and the price point at which they wish to change their demand.

Bids may be changed at any time until the end time of the round. At the end of each round, the auction system processes all bids in accordance with the processing algorithm set out in Schedule 2 to the determination. If demand exceeds supply for any product, the auction continues to the next round. The primary stage concludes when there is no excess demand across all products. Detailed rules about the primary stage are set out in Schedule 2 to the determination.

In the primary stage, there are up to 14 generic lots of paired 5 MHz frequency division duplex (**FDD**) spectrum being offered across the 6 products as follows:

- > 850 major population product – 2 lots
- > 850 regional product – 2 lots
- > 900 lower major population product – 1 lot
- > 900 lower regional product – 1 lot
- > 900 upper major population product – 4 lots
- > 900 upper regional product – 4 lots.

However, if a set-aside applicant elects to take up its set-aside lots in the 900 upper major population and 900 upper regional products, those lots will not be available for bidding in the primary stage. For example, if one set-aside applicant takes up its set-aside lots, only 3 lots of the 900 upper major population and 900 upper regional products are available for bidding in the primary stage. If both set-aside applicants take up their set-aside lots in the 900 upper major population and 900 upper regional products, only 2 lots of each product are available in the primary stage.

2. **Secondary stage**—After the primary stage has finished, if any single generic lot remains unallocated in any product (residual lots), a secondary stage is used to allocate those lots in accordance with the procedures set out in Schedule 3 to the determination. These residual lots typically arise from operation of the MSR feature, but may also result from insufficient bidder demand. The secondary stage uses the Simple Clock Auction (**SCA**) format with a simple ascending bid methodology. All residual lots are offered concurrently within this stage. The starting prices for the secondary stage are the same as for the primary stage. The secondary stage concludes when the final round has concluded for each residual lot available for bidding in the secondary stage.
3. **Assignment stage**—The purpose of the assignment stage is to assign specific frequencies within the 850/900 MHz band to the generic lots allocated in the primary stage and the secondary stage, and the set-aside lots (if taken up). Winning bidders from the primary stage are invited to submit bids on a number of frequency range options determined by the auction manager, using the auction system in accordance with the procedures set out in Schedule 4 to the determination. For example, in the case of 3 successful bidders where there is no unallocated spectrum for a product, each may bid on whether their holding is assigned the low, middle or high position within the band. There will be a number of assignment rounds, each for the assignment of frequencies to the allocated lots of one or more products.

Immediately before the first assignment round:

- > the frequency range for the sole lot of the 900 lower major population product and the sole lot of the 900 lower regional product is automatically assigned, since there is only 1 lot of each product
- > the downshift metropolitan lot is allocated to the winner of the sole lot of the 900 lower major population product.

- > the downshift regional lot is allocated to the winner of the sole lot of the 900 lower regional product.

There is no additional spectrum access charge for the downshift lots.

Other matters

The determination is part of a suite of legislative instruments required to allocate spectrum licences in the 850/900 MHz band. These instruments provide additional information about the auction and the spectrum licences that will be available for allocation.

Under section 39A of the Act, the ACMA has made the marketing plan for the 850/900 MHz band. The marketing plan specifies the spectrum available and the conditions that will apply to its use under spectrum licences. The technical conditions to be included in spectrum licences allocated in accordance with the marketing plan and the determination are drawn from the ACMA's technical framework for the 850/900 MHz band, as set out in the following legislative instruments:

- > the *Radiocommunications Advisory Guidelines (Managing Interference from Spectrum Licensed Transmitters — 850/900 MHz Band) 2021*;
- > the *Radiocommunications Advisory Guidelines (Managing Interference to Spectrum Licensed Receivers — 850/900 MHz Band) 2021*;
- > the *Radiocommunications (Unacceptable Levels of Interference — 850/900 MHz Band) Determination 2021*.

A provision-by-provision description of the determination is set out in the notes at **Attachment A**.

Documents incorporated by reference

Subsection 314A(1) of the Act provides that an instrument under the Act may make provision in relation to a matter by applying, adopting or incorporating (with or without modifications) provisions of any Act as in force at a particular time, or as in force from time to time. Subsection 314A(2) of the Act provides that an instrument under the Act may make provision in relation to a matter by applying, adopting or incorporating (with or without modifications) matters contained in any other instrument or writing as in force or existing at a particular time or from time to time. The determination incorporates the following Acts and legislative instruments by reference (including by the adoption of definitions) as in force from time to time, or otherwise refers to them:

- the Act;
- the *Acts Interpretation Act 1901*;
- the *A New Tax System (Australian Business Number) Act 1999*;
- the *Australian Communications and Media Authority Act 2005*;
- the *Banking Act 1959*;
- the *Competition and Consumer Act 2010*;
- the *Corporations Act 2001*;
- the *Criminal Code*;
- the *Insurance Act 1973*;
- the LA;
- the *Legislation (Exemptions and Other Matters) Regulation 2015*;

- the marketing plan;
- the *Public Service Act 1999*;
- the re-allocation declaration;
- the spectrum licence limits direction;
- the *Telecommunications Act 1997*.

The Acts and legislative instruments listed above may be obtained, free of charge, from the Federal Register of Legislation (www.legislation.gov.au).

The determination also incorporates the ‘HCIS – List of Population Data’ document, published by the ACMA, as in force from time to time. The HCIS – List of Population Data document is available, free of charge, from the ACMA’s website (www.acma.gov.au).

Consultation on the determination

Before the determination was made, the ACMA was satisfied that consultation was undertaken to the extent appropriate and reasonably practicable, in accordance with section 17 of the LA.

A draft version of the determination was released for public consultation on 27 April 2021, together with the consultation paper [*Draft instruments for the 850/900 MHz band auction*](#) (**draft allocation instruments consultation**). Consultation closed on 24 May 2021.

The ACMA received 11 written submissions in response to this consultation paper and the draft version of the determination. The ACMA had regard to the views of stakeholders during the finalisation of the determination.

In the draft allocation instruments consultation, the ACMA proposed only 3 products for the 850/900 MHz band in the draft marketing plan. After consultation, the ACMA included 6 products in the marketing plan. Four submissions opposed the ACMA’s proposed information policy of providing excess supply information but not excess demand information at the end of each round in the primary stage. In response to these submissions, and given the increased number of products in the auction, the ACMA has adopted a full information policy for the primary stage.

Three submissions also proposed the use of the MSR feature to ensure viable spectrum holdings. In response, the ACMA has included in the determination an optional MSR of 2 lots in the primary stage. However, the MSR does not apply to the 900 lower major population and 900 lower regional products, since there is only 1 lot of each product. It is also not available to set-aside participants in relation to the 900 upper major population and 900 upper regional products, since they are already guaranteed a minimum 1 lot of each of those products. As a consequence of including the MSR, the determination also provides for a secondary stage (if required) for auctioning any single unallocated lot of a product after the primary stage.

Four submissions opposed the ACMA’s power to vary starting prices, included in the draft determination. However, the ACMA considers that this is an appropriate tool to respond to any major market changes or other significant changes that occur after the application deadline. Therefore, it has not removed this power from the determination.

Two submissions opposed the ACMA’s proposal to require set-aside applicants to elect whether to take up their set-aside lots in their application forms, which must be submitted no later than the application deadline. Of these, one supported a deadline closer to the eligibility deadline, while the other supported the ability to make a final commitment to the set-aside lots during the pre-bidding phase. One further submission supported the proposal. The ACMA considered that, while it may

create timing challenges for set-aside applicants, the application deadline was the appropriate time for the election to be made to ensure that other bidders had certainty regarding the number of lots of the 900 upper major population and 900 upper regional products available in the primary stage. Therefore, it has not changed this requirement in the determination.

In the draft allocation instruments consultation, the ACMA presented two options for setting the spectrum access charge for set-aside lots:

- exit price – bidders pay the price at which they reduce demand to zero for lots of all products;
- uplift price – bidders pay an ‘uplift’ on the starting prices that would otherwise apply to the lots.

Two submissions supported the exit price option. Two submissions opposed both options, of which one supported using the starting price, and the other proposed a price based on the current 900 MHz PMTS Class B apparatus licences or aligned to the price the Government offered to public safety agencies for 2 x 5 MHz of the 850/900 MHz band.

Given the submissions, and given the increase from 3 to 6 products, the ACMA considered the uplift price was the more likely to promote an efficient allocation of spectrum, having had regard to:

- the need for price certainty for set-aside applicants to decide whether to take up their set-aside lots
- the complexity of the exit price option with 6 products available in the auction
- the opportunities for strategic bidding in both options

The ACMA has decided to adopt the uplift price. The determination gives the ACMA the power to set a set-aside price for a set-aside lot, with an uplift factor between 20-30%. This range has been adopted having had regard to:

- previous prices paid in sub-1 GHz spectrum auctions and spectrum licence re-issue processes;
- the value of guaranteed spectrum lots allocated outside of a competitive market mechanism;
- the potential for some competitive tension in the auction;
- achieving the Government’s policy objective to promote continuity of existing services;

In the draft allocation instruments consultation, the ACMA proposed that spectrum access charges would be payable in full, shortly before the commencement of spectrum licences in 2024. Five submissions opposed the ACMA’s proposal for upfront payments of the spectrum access charge and expressed support for a variety of instalment payment options.

However, the [Spectrum Pricing Review](#) recommended that the ACMA should generally require upfront lump-sum payments. In light of the 2.5 year period between the auction and when payments are proposed to be required (shortly before licence commencement on 1 July 2024), the ACMA was not persuaded that instalment payments were warranted. Therefore, upfront payments have been maintained in the determination. (See also the notes on clause 3 of Schedule 5, appearing in Attachment A.)

The ACMA held a targeted consultation with submitters on 11 June 2021 regarding geographic lot configuration and auction settings. The ACMA received eight submissions to this consultation. The changes to the determination from the targeted consultation resulted from adopting a disaggregated geographic lot configuration in the marketing plan. There were no further changes to auction settings.

In accordance with subsection 60(13A) of the Act, the ACMA consulted with the Australian Competition and Consumer Commission (ACCC) about whether the procedures in the determination should impose limits as mentioned in subsection 60(5) and, if so, the nature of those limits. The ACMA requested advice from the ACCC on 30 June 2021. The ACCC provided this advice on 14 July 2021. On 1 August 2021, the Minister made the spectrum licence limits direction, informed by advice from the ACCC, submissions to public consultation conducted by the Department of Infrastructure, Transport, Regional Development and Communications and the Government's communications policy objectives for the 850/900 MHz allocation. The ACMA has followed the direction in developing the allocation procedures in the determination.

In accordance with subsection 60(14) of the Act, the ACMA consulted with the ACCC about whether the procedures in the determination should include a requirement that the ACMA give specified information to the ACCC and, if so, the nature of that requirement. The ACMA consulted with ACCC staff in March 2021. Section 84 has been included in the Determination to reflect the possible interest of the ACCC in the auction process.

Regulatory impact assessment

A preliminary assessment of the proposal to make the allocation instruments was conducted by the Office of Best Practice Regulation (OBPR), based on information provided by the ACMA, for the purposes of determining whether a Regulation Impact Statement (RIS) would be required. OBPR advised that a RIS would not be required because the proposed regulatory change is minor or machinery in nature – OBPR reference number 43548.

Statement of compatibility with human rights

Subsection 9(1) of the *Human Rights (Parliamentary Scrutiny) Act 2011* requires the rule-maker in relation to a legislative instrument to which section 42 (disallowance) of the LA applies to cause a statement of compatibility with human rights to be prepared in respect of that legislative instrument.

The statement of compatibility set out below has been prepared to meet that requirement, to the extent it applies to the determination.

Overview of the instrument

On 27 October 2020, the then Minister for Communications, Cyber Safety and the Arts made the re-allocation declaration. The re-allocation declaration provides that the 850/900 MHz band across the majority of Australia, with the exception of the Mid-West Radio Quiet Zone, is subject to re-allocation by issuing spectrum licences.

The ACMA intends to allocate spectrum licences for the 850/900 MHz band in late 2021 by a combination of:

- auction;
- allocation for a pre-determined price; and
- direct allocation.

Under subsection 60(1) of the Act, the ACMA must determine the procedures for allocating spectrum licences by auction, tender, by allocation for a pre-determined or negotiated price, by direct allocation, or by a combination of two or more of those methods. The determination is made, in substantial part, under that provision. The determination sets out the procedures to be applied in allocating spectrum licences in the 850/900 MHz band. These licences will be allocated in a 3-stage auction process using the ESMRA format. To the extent that the determination is made under

subsection 60(1) of the Act, it is not a disallowable instrument (see item 29 in the table at regulation 10 of the *Legislation (Exemptions and Other Matters) Regulation 2015*).

Under subsection 294(1) of the Act, the ACMA may also make determinations fixing spectrum access charges payable by licensees for issuing spectrum licences and specifying the time when spectrum access charges are payable. The determination fixes the spectrum access charges payable by the persons to whom spectrum licences in the 850/900 MHz band are allocated, primarily by reference to the winning prices in the auction. To the extent that the determination fixes the spectrum access charges payable by licensees for issuing spectrum licences, and the timing of such payments, the determination is made under subsection 294(1) of the Act. To the extent that the determination is made under subsection 294(1) of the Act, it is a disallowable instrument. Provisions which are made under section 294 of the Act are identified in the determination and in the notes in Attachment A.

Subject to compliance with the allocation limits required to be included in the determination by the spectrum licence limits direction, any person may apply to participate in the auction to be held in accordance with the determination.

Human rights implications

The ACMA has assessed whether the determination is compatible with human rights, being the rights and freedoms recognised or declared by the international instruments listed in subsection 3(1) of the *Human Rights (Parliamentary Scrutiny) Act 2011* as they apply to Australia.

Having considered the likely impact of the instrument and the nature of the applicable rights and freedoms, the ACMA has formed the view that the determination does not engage any of those rights or freedoms.

Conclusion

The determination is compatible with human rights as it does not raise any human rights issues.

Notes to the *Radiocommunications (Spectrum Licence Allocation – 850/900 MHz Band) Determination 2021*

Part 1–Preliminary

Section 1 Name

This section provides for the determination to be cited as the *Radiocommunications (Spectrum Licence Allocation – 850/900 MHz Band) Determination 2021*.

Section 2 Commencement

This section provides for the determination to commence on the day after the day it is registered on the Federal Register of Legislation.

The Federal Register of Legislation may be accessed free of charge at www.legislation.gov.au.

Section 3 Authority

This section identifies the provisions of the Act that authorise the making of the determination, namely, sections 60 and 294 of the Act.

Section 4 Interpretation

Subsection 4(1) defines a number of key terms used throughout the determination and identifies where other key terms are defined in the determination. A number of other expressions used in the determination are defined in the Act or other legislation.

Subsection (2) identifies the provisions that determine whether a person is, or whether no person is, a *set-aside participant*. These relate to whether a set-aside applicant (TPG, Optus or their relevant associates) has elected to take up set-aside lots, or whether they have withdrawn or been taken to have withdrawn their application.

Subsections (3) and (4) define the terms *minimum spectrum requirement* and *provisional minimum spectrum requirement* as they apply to the primary and secondary stages of the auction.

Subsection (5) provides that, in the determination, a reference to a part of the spectrum, a frequency band or a frequency range includes all frequencies that are greater than but not including the lower frequency, up to and including the higher frequency.

Subsection (6) provides that a reference to time in the determination is a reference to the legal time in the Australian Capital Territory.

Section 5 Lots and products

This section defines terms and phrases that relate to the description of units of spectrum (lots) and groups of lots (products) that are being offered in the auction. There are 6 products being offered in the auction, each configured in lots of 5 MHz paired spectrum:

- the 850 major population product – 2 lots
- the 850 regional product – 2 lots
- the 900 lower major population product – 1 lot
- the 900 lower regional product – 1 lot
- the 900 upper major population product – 4 lots
- the 900 upper regional product – 4 lots

There are also two downshift lots to be allocated in the auction:

- the downshift metropolitan lot, allocated to the winner of the sole lot of the 900 lower major population product
- the downshift regional lot, allocated to the winner of the sole lot of the 900 lower regional product

The purpose of the downshift lots is explained in the explanatory statement for the marketing plan, available on the Federal Register of Legislation.

Section 6 References to other instruments

This section provides that in the determination, unless the contrary intention appears:

- a reference to another legislative instrument is a reference to that other legislative instrument as in force from time to time; and
- a reference to any other kind of instrument or writing is a reference to that other instrument or writing as in force or existing from time to time.

Section 7 Giving documents to the ACMA

This section sets out requirements for giving documents to the ACMA, including the approved formats for those documents. These requirements apply to any documents being given to the ACMA for the purpose of the allocation process under the determination. They are intended to work primarily with section 31 (Making an application), section 38 (Requirements for new application), section 45 (Giving replacement application form), section 46 (Updating eligibility nomination form and financial security) and section 48 (Making an application – new applicants to the auction), among other sections.

A person may give a document to the ACMA by email or delivery to a physical address. Where documents are given by email, this section also prescribes the electronic file format that particular documents being lodged must be in, namely, Portable Document Format (PDF) for any document, Word for any document that is not a statutory declaration, statement, deed or bank guarantee, or any other electronic format approved by the auction manager.

This section also provides that when a person gives a deed of financial security to the ACMA, they may do so by providing one or more deeds of financial security.

Section 8 Statutory declaration for body corporate

This section provides that where the determination requires a body corporate to make a statutory declaration, such a declaration must be made by a director or secretary of that body corporate.

Section 9 Signing or executing documents other than deeds and statutory declarations

This section provides that any document, other than a statutory declaration or a deed, may be signed or executed electronically. It further provides that if the document requires witnessing, it may be witnessed by audio-visual link. The intent of these arrangements is to enable applicants and bidders to complete necessary documents in circumstances where signatories and witnesses may be working remotely and not in a central office location. Applicants and bidders may execute, and have witnessed, statutory declarations and deeds electronically if permitted by the relevant Commonwealth or State and Territory legislation.

Section 10 Payments of amounts

This section prescribes the manner in which payments under the determination must be made to the ACMA.

Amounts can be paid to the ACMA by bank cheque or by electronic transfer and must be made in Australian currency.

A person may make an electronic transfer using BPay or by credit card payment to pay the balance of their winning price under Schedule 5 to the determination.

A person will be taken to have made a payment by the specified deadline provided the ACMA receives the full amount in the ACMA's nominated bank account within 3 working days of the deadline and the person gives the ACMA evidence that the transfer was made on or before the deadline. Where full payment is not received within 3 working days, the payment will only be taken to have been made if the ACMA is satisfied the person making the payment has taken all reasonable steps to pay the amount on or before the deadline.

A payment will not be considered to have been paid in full where bank charges or government duties imposed on the payment reduce the amount to less than the amount due. It is in the interests of the person making the payment to ensure that any bank charges or government duties imposed on a payment do not reduce the payment received by the ACMA to less than the full amount due.

Any amount to be paid under the determination that is not an amount in whole dollars is to be rounded up to the next dollar.

Where the ACMA makes or receives a payment under the determination, it does so on behalf of the Commonwealth.

Section 10 relates to the fixing of spectrum access charges set under Division 2 of Part 6 of the determination for the purpose of section 294 of the Act, and is therefore disallowable under section 42 of the LA.

Section 11 Giving documents to bidders

This section provides that the auction manager may give information to or notify a bidder by using the auction system. However, there is no obligation for the auction manager to use the auction system to notify or give information to a bidder.

Part 2—General limits on allocation of spectrum

Division 1 General allocation limits

Section 12 Interpretation

This section defines key terms used in Part 2.

Section 13 Meaning of *allocation limits*

This section defines how the term *allocation limits* is used throughout the determination.

The Minister has given the ACMA a written direction under subsection 60(10) of the Act (see sections 5 and 7 of the spectrum licence limits direction), which requires the ACMA to determine procedures that impose limits on the aggregate parts of the spectrum that, as a result of the allocation of spectrum licences under Subdivision B of Division 1 of Part 3.2 of the Act, may in total be used by a person or members of a relevant group of persons (namely, any person and that person's associates).

As required by the spectrum licence limits direction, the allocation limits apply to the use of spectrum in the sub-1 GHz band.

The general allocation limits set out in Part 2 do not relate to the limits set out in section 6 of the spectrum licence limits direction. Those latter limits relate to the set-aside spectrum.

Section 14 Allocation limits

This section sets out the general allocation limits imposed in accordance with section 7 of the spectrum licence limits direction. Relevantly, the allocation limits provide that no person or relevant group of persons may, as a result of the allocation of a spectrum licence, use:

- more than an aggregate of 82 MHz of the sub-1 GHz band under spectrum licences in the major population area; or
- more than an aggregate of 92 MHz of the sub-1 GHz band under spectrum licences in the regional area.

Spectrum licences have been issued in several parts of the spectrum below 1 GHz. In particular, spectrum licences have been issued in the parts of the spectrum from 825 MHz to 845 MHz and 870 MHz to 890 MHz (**800 MHz band**). Spectrum licences in the 800 MHz band have different geographic areas from the 850/900 MHz band, and one such spectrum licence might authorise the use of spectrum in both the major population area and the regional area. Accordingly, and in accordance with the spectrum licence limits direction, subsections (2) and (3) provide that existing spectrum holdings in the 800 MHz band are not to be taken into account for limits applying to the major population area where the population of the part of the major population area covered by the spectrum licence is taken to be ‘insignificant’. That population will be ‘insignificant’ if it is less than 25 per cent of the total population of the major population area.

Further detail about the allocation limits can be found in the explanatory statement to the spectrum licence limits direction available on the Federal Register of Legislation.

Division 2 Associates, relevant group of persons and affiliations

Section 15 Meaning of *associate* and *relevant group of persons*

This section defines the meaning of *associate* and *relevant group of persons* for the purposes of the allocation limits, consistent with the spectrum licence limits direction.

An associate is:

- in relation to a person that is a body corporate—a director or secretary of the body, a related body corporate, a director or secretary of a related body corporate, or an individual with at least 15% of the voting power or issued shares in the body;
- in relation to a person that is an individual—the individual’s spouse or de facto partner, a body corporate in which the individual has at least 15% of the voting power or issued shares, a body corporate of which the individual is a director or secretary, or a related body corporate of such a body corporate of which the individual is a director or secretary;
- a person that is a party to a ‘relevant agreement’ with another person for the use or acquisition of a spectrum licence in relation to part of the spectrum in the 850/900 MHz band.

The inclusion of parties to a ‘relevant agreement’ as associates covers agreements, arrangements or understandings, formal or informal, written or oral, partly formal and partly informal, where one person (**the first person**) has agreed that another person would acquire spectrum in their own right, but for the benefit of the first person, or that relates to the acquisition of a spectrum licence for a part of the spectrum in the 850/900 MHz band. Roaming services agreements between mobile telecommunications carriers, and agreements between carriers provided for under the *Telecommunications Act 1997* or Part XIC of the *Competition and Consumer Act 2010*, are not included in the meaning of ‘relevant agreement’ for the purposes of the definition of ‘associate’.

A **relevant group of persons** means a person and all the associates of that person. A relevant group of persons can also be any 2 or more groups of a person and all associates of that person, that have at least one member in common.

However, an individual is taken not to be a member in common between 2 or more groups that are comprised of a person (**relevant person**) and the associates of that relevant person where all of the following apply:

- (a) the individual is providing services as a company secretary (**company secretarial services**) to one or more related bodies corporate of the relevant person in each of the groups;
- (b) the individual is providing the company secretarial services through a person or entity that:
 - (i) is not in any of the groups; and
 - (ii) carries on a business for the provision of professional services, including company secretarial services; and
 - (iii) has, in the ordinary course of carrying on that business, been separately and independently engaged by an entity within each of those groups, under a contract or other legally binding arrangement, to provide the company secretarial services;
- (c) the individual is not, otherwise than by reason of providing the company secretarial services, an associate of any of the relevant persons;
- (d) each of the related bodies corporate to which the individual is providing the company secretarial services is incorporated outside Australia.

The determination adopts these definitions from the spectrum licence limits direction.

Section 16 Affiliation between applicants or bidders

This section provides that 2 applicants or bidders will be taken to be affiliated if the applicants or bidders are in the same relevant group of persons. The definition of relevant group of persons means that 2 applicants or bidders will be affiliated if they have an associate in common. An example would be where 2 applicants or bidders have a director in common. However, an individual is taken not to be a ‘member in common’ if the conditions relating to company secretarial services specified in section 15 apply.

Section 17 Information relevant to considering whether applicants or bidders are affiliated

This section sets out the matters that the ACMA must take into account in considering whether an affiliation exists between 2 or more applicants or bidders, namely, by having regard to certain documents and information given to the ACMA by applicants and bidders under the determination. The ACMA may also have regard to any other information it considers relevant in determining information about affiliations.

Part 3—Confidentiality

Section 18 Meaning of *confidential information*

The definition of the term ***confidential information*** forms the basis of the confidentiality rules imposed by this Part. The definition includes information that could give rise to collusion or price-signalling (both deliberate and inadvertent) if disclosed, such as information about a bid, or about proposed bids of an applicant or bidder, an applicant’s or bidder’s bidding strategy, or the amount an applicant or bidder is willing to pay for a lot or group of lots in the auction. It also includes documents an applicant or bidder has given to the ACMA for the purpose of the auction (e.g. its application form) and information provided to a bidder by the ACMA for the purposes of participating in the auction. More generally, the definition also covers any information that, if disclosed, could be expected to affect or be capable of affecting an applicant’s or bidder’s activity prior to or during the auction, or that could affect the outcome of the auction.

Section 19 Obligation not to disclose confidential information

This section provides that an applicant or bidder must not disclose its confidential information to any person, other than in the case of specific exceptions listed in the section. This confidentiality obligation also applies to a related person of an applicant or bidder, or a contractor of an applicant or bidder, who has knowledge of the applicant's or bidder's confidential information.

Although the disclosure of confidential information is prohibited by this section, in order for an applicant to effectively participate in the allocation process (and comply with other requirements), there are certain limited circumstances in which confidential information may need to be communicated to another person. Subsection (2) sets out the exceptions to the prohibition on the disclosure of confidential information. These include where an applicant or bidder discloses confidential information to a related person of that applicant or bidder, or to an advisor or consultant for the purpose of obtaining advice relating to the allocation process or obtaining finance to make a payment in the auction. They also include where an applicant or bidder discloses that they are participating in the auction, discloses confidential information to the ACMA, or as authorised by the determination or required by law.

Information that would otherwise fall within the definition of confidential information but is already publicly available, and was not disclosed by a breach of this section, may also be disclosed.

Section 20 Duration of confidentiality obligation

In order to protect against collusion and price-signalling (whether deliberate or inadvertent) at all stages of the allocation process, the rules on confidential information apply to each applicant, bidder and related person or contractor with knowledge of the applicant's, or bidder's, confidential information. This section sets out when, after the allocation process, the confidentiality obligation for an applicant or bidder, and for a related person or contractor of an applicant or bidder, will end. An applicant, or bidder and their related persons or contractors, will be released from the confidentiality obligation when one of the circumstances set out in this section takes place:

- an applicant (who has withdrawn) is notified under section 73 that the applicant's confidentiality obligation is at an end; or
- for a bidder (winning or otherwise), when the ACMA announces or publishes the auction results under subsection 79(1).

Section 21 Reporting breach of confidentiality

Given its potential impact on the outcome of the auction process, and to ensure a fair and robust auction, it is important that the ACMA is made aware of any breach of the rules on confidentiality as soon as possible. This section requires applicants and bidders, and their related persons and contractors, to notify the ACMA in writing as soon as possible after becoming aware of a breach of the confidentiality rules, and no later than 2 working days after becoming aware of the breach. This applies where the applicant or bidder, or related person or contractor, of the applicant or bidder, discloses the confidential information or receives confidential information of another applicant or bidder.

Section 22 Notice of breach of confidentiality

This section applies where the ACMA has reason to believe there has been a breach of the rules regarding the disclosure or reception of confidential information by an applicant or bidder (or a related person or contractor of an applicant or bidder). In such cases, the ACMA must advise the applicant or bidder of the details and ask them to make submissions to the ACMA about the matter. The ACMA must set a deadline for the provision of any submissions that is no more than 5 working days after the date of the request.

The ACMA is not obliged to tell the applicant or bidder of its belief before the auction period ends but must do so as soon as practicable after the auction period ends.

Section 23 Deed of confidentiality required from related persons and contractors

A deed of confidentiality represents an explicit commitment on the part of related persons of an applicant or bidder that they will comply with the rules regarding the disclosure of confidential information throughout the allocation process. It is important that individual employees of an applicant or bidder (or of a related body corporate that provides services to the applicant or bidder) who have knowledge of their employer's confidential information understand the importance of confidentiality in this process and acknowledge this through signing a confidentiality deed.

The section provides that a deed of confidentiality will be required from related persons, being employees of the applicant or bidder, or employees of a related body corporate of the applicant or bidder that provides services to the applicant or bidder, as well as from contractors who have knowledge of confidential information of the applicant or bidder.

The obligation to complete a deed of confidentiality under this section will not extend to a director or company secretary of an applicant or bidder, unless the director or secretary is also an employee of the applicant or bidder.

A deed of confidentiality will also not be required from a contractor of an applicant or bidder (who has knowledge of its confidential information), if the contract is for the purposes of:

- obtaining advice relating to the auction from the contractor in their professional capacity;
- obtaining finance to make a payment in relation to the auction.

Where a related person of an applicant gains knowledge of the applicant's confidential information prior to the application deadline (or a new application deadline, if there is one), a deed of confidentiality from the related person must be submitted to the ACMA before the relevant deadline.

Part 4—Procedures before auction

Division 1 Preliminary

Section 24 Auction manager

This section provides that the ACMA must appoint a member of the ACMA, a member of the ACMA's staff, or an officer or employee of another Commonwealth authority, whose services are made available to the ACMA, to manage the auction (**the auction manager**). This appointment will be made in writing. The auction manager will facilitate and manage the auction conducted under the determination.

In conducting auctions under a determination made under section 60 of the Act, it has been a long-standing practice of the ACMA to appoint, as an auction manager, a member of the ACMA's staff holding a particular role. Generally, this has been the manager of the team responsible for spectrum licence allocation, who is employed at Executive Level 2 under the *Public Service Act 1999*. The ACMA expects to continue this policy for the auction process established by the determination.

Section 25 Application fee

This section provides that the ACMA must set an application fee prior to inviting applications for the auction. This amount set will be included in a notice to advertise the auction and must be paid as part of a valid application.

Section 26 Application fee not refundable except in certain circumstances

This section states that the application fee to be paid under the determination as part of the application requirements will not be refunded to an applicant or bidder, with one exception. The exception may apply if the ACMA varies the starting prices under paragraph 43(1)(a). In such a case, if an applicant withdraws, the ACMA will refund the application fee no later than 6 months after the applicant withdraws. In all other cases, the ACMA will not refund the application fee of an applicant who has withdrawn.

Section 27 Application deadline and eligibility deadline

This section provides that the ACMA must set an application deadline and an eligibility deadline before it advertises the auction.

Before the application deadline, an applicant must submit a completed application form, a completed deed of acknowledgement and a completed deed of confidentiality to the ACMA, and pay the application fee.

Before the eligibility deadline, an applicant must submit a completed eligibility nomination form to the ACMA, and pay an eligibility payment or give a deed of financial security to the ACMA, or a combination of both.

Section 28 Starting prices, lot ratings and forms

This section provides that the ACMA must set:

- the starting price for the lots of each product;
- the lot rating for lots of each product;
- the set-aside price for set-aside lots in the 900 upper major population product and the 900 upper regional product.

The starting price is equivalent to the reserve price for the lots of each product. It will not be possible within the auction system for an applicant to place a bid for an amount below the starting price.

Lot ratings are an estimation of the relative value of the different lots on offer, measured in eligibility points. For example, a product with a lot rating of 60 is approximately 3 times more valuable than another product with a lot rating of 20. They are an important part of the efficiency of the auction because they facilitate switching demand between different products. When combined with the activity target, they reduce the opportunity for strategic bidding by requiring bidders to reveal their demand from the commencement of the auction rather than only near the end (bid spiking).

If a set-aside applicant elects in its application form to take up its set-aside lots, the set-aside price for each lot will form part of the winning price to be paid by the set-aside participant. In this case, these set-aside lots will not be available for bidding in the primary stage and the secondary stage. The set-aside price for a set-aside lot of the 900 upper major population product must be between 20 to 30% above the starting price for the 900 upper major population product, and the set-aside price for a set-aside lot of the 900 upper regional product must be between 20 to 30% above the starting price for a set-aside lot of the 900 upper regional product.

The setting of the starting prices and set-aside prices relates to the fixing of spectrum access charges set under Division 2 of Part 6 of the determination for the purpose of section 294 of the Act. These parts of section 28 are therefore disallowable under section 42 of the LA.

After setting each of these amounts, the ACMA must approve various forms, including:

- an application form;
- a deed of acknowledgement form;

- a deed of financial security form;
- a deed of confidentiality form;
- one or more forms for the purposes of a statutory declaration or statement about whether the applicant or bidder is affiliated with another applicant or bidder.

If a set-aside applicant elects to take up set-aside lots, it must do so in its application form. This ensures that the supply of lots available in the primary stage is known before the ACMA approves an eligibility nomination form for applicants to complete. Any set-aside lots taken up are not available for bidding in the primary stage or secondary stage.

Accordingly, the application form must include a requirement for, and a guide to:

- identifying whether the applicant is a set-aside applicant; and
- if so, stating whether it wishes to take up a set-aside lot of both:
 - the 900 upper major population product; and
 - the 900 upper regional product

Division 2 Advertising the auction

Section 29 Notice advertising auction

This section provides that the ACMA must publish a notice on its website (www.acma.gov.au) inviting interested persons to apply to the ACMA to participate in the auction. The notice will specify the spectrum to be allocated and will describe in general terms how the allocation will proceed. It will also inform prospective applicants how they may obtain the applicant information package (AIP) that will explain the allocation process in greater detail.

The deadlines for lodging the application form and associated documentation (application deadline) and eligibility nomination form and eligibility payment and/or deed of financial security (eligibility deadline) required to participate in the allocation process will also be included in the notice.

Subsection (2) provides that if there are any changes to information in the notice, the ACMA must publish another notice on its website with details of the change.

Subsection (3) provides that the ACMA may also publish the information provided in the advertisement, and other information about the auction, by other means.

Section 30 Applicant information package

The AIP gives prospective participants the key information they need to decide whether to participate in the allocation process. This section specifies the information that the AIP must contain. The AIP includes the determination, the marketing plan, the re-allocation declaration, and the spectrum licence limits direction, which are the key instruments that provide the legal basis for the allocation process.

The AIP will also provide information, forms and documentation needed for a person to apply to be registered as a bidder, participate in the auction, and be allocated and issued spectrum licences. The AIP also advises that the eligibility deadline is the last time for withdrawal from the auction, but notes that the eligibility deadline may be extended.

To assist interested parties to better understand the contents of the AIP, this package will include an auction guide which will set out a summary of how the auction will take place as well as other relevant information.

The ACMA must publish the AIP on its website. A notice will also be published giving details of any subsequent changes made to the AIP after initial release.

Division 3 Application to participate in the auction

Section 31 Making an application

To take part in the auction, a person must first apply to the ACMA to be registered as a bidder. This section sets out the required documents and forms that an applicant must submit, and requires those documents and forms to be accompanied by the application fee. For an application to be considered valid, applicants must do the following before the application deadline:

- give the ACMA a completed application form;
- give the ACMA a signed deed of acknowledgement executed by the applicant;
- give the ACMA a signed deed of confidentiality completed by the applicant; and
- pay the application fee set by the ACMA.

Set-aside applicants must also state in their application form whether they elect to take up a set-aside lot of both the 900 upper major population product and the 900 upper regional product.

A set-aside applicant may not take up a set-aside lot of only one of the 900 upper major population product or 900 upper regional product. This reflects the Government's policy objective to support continuity of services. Existing mobile services in the 850/900 MHz band are licensed on a national basis and so it is appropriate that set-aside lots also be taken up on a national basis.

Any set-aside applicant who elects to take up these set-aside lots becomes a **set-aside participant**. If there is at least one set-aside participant, section 62 and Schedule 1 provide that the set-aside lots are allocated immediately before the start of the pre-bidding phase of the primary stage of the auction.

Once the application deadline has passed and the affiliates process is completed (as to which, see below), the ACMA will know the number of set-aside lots taken up and, therefore, the available lots in the 900 upper major population and 900 upper regional products available to all bidders in the primary stage.

As soon as practicable after the application deadline and at least 15 working days before the eligibility deadline, the ACMA must:

- approve an eligibility nomination form;
- tell each applicant how many set-aside participants there are;
- if there is only one set-aside participant – tell each applicant the identity of the set-aside participant;
- tell each applicant how many lots of:
 - the 900 upper major population product;
 - the 900 upper regional product;are available for bidding in the primary stage;
- give each applicant a copy of the eligibility nomination form;
- give each applicant information about securing its maximum eligibility points through making an eligibility payment, giving a deed of financial security, or a combination of both.

The 15 working day period is in order to provide sufficient time for bidders to complete bidding strategy decisions and governance approvals.

If there is only one set-aside participant, both set-aside applicants will know which party has taken up its set-aside lots, but other bidders will only know that one of the set-aside applicants has taken up its set-aside lots. This creates an information asymmetry between bidders. To prevent this, the ACMA will tell each applicant the identity of the set-aside participant in this case.

The eligibility nomination form must include a guide for applicants to assist them to:

- specify their provisional start demand for each product;
- calculate their maximum eligibility points;
- select or not select a provisional MSR for each product.

Bidders may not select a provisional MSR for the 900 lower major population or 900 lower regional products because there is only 1 lot of each product. Set-aside participants may not select a provisional MSR for the 900 upper major population or 900 upper regional products because they already have a guaranteed minimum of 1 lot for these products. The purpose of the MSR is to prevent a bidder who has a minimum requirement of 2 lots from winning only 1 lot. For each product, the only option for an MSR is 2 lots.

The auction manager enters this information into the register and auction system after the eligibility deadline (or extended eligibility deadline, if there is one). Registered bidders are provided with an opportunity to confirm or change their provisional start demands and provisional MSRs in the auction system during the pre-bidding phase, which become actual start demands and MSRs at the conclusion of the pre-bidding phase.

After the application deadline and no later than the eligibility deadline, the applicant must give the ACMA a completed eligibility nomination form which specifies:

- the number of lots of each product desired by the applicant as valid provisional start demands of the applicant, at the starting price for the lots of the product; and
- the maximum eligibility points of the applicant, based on those specified provisional start demands;
- whether the applicant has selected a provisional MSR for the lots of the product.

In accordance with section 42, the applicant must also make an eligibility payment to the ACMA, or give the ACMA a deed of financial security, or a combination of both.

If a set-aside participant does not submit a completed eligibility nomination form and make an eligibility payment or give a deed of financial security (or a combination of both) to the ACMA by the eligibility deadline, the set-aside participant is not entitled to bid in the primary stage and the secondary stage. They will still be allocated their set-aside lots, and be able to bid in the assignment stage for a frequency range option for those lots. If an applicant other than a set-aside participant has not submitted a completed eligibility form and made an eligibility payment or given a deed of financial security (or a combination of both) to the ACMA by the eligibility deadline, then the applicant is taken to have withdrawn its application.

An applicant may also lodge an updated document at any time prior to the relevant deadline for that document (either application deadline or eligibility deadline), but not afterwards.

If a deed of financial security is given to the ACMA by email, the original deed must be received by the ACMA no later than 3 working days after the eligibility deadline (or a later time if agreed by the ACMA) for the application to be valid.

Section 32 Initial auction information provided to applicants

After the application deadline, the ACMA must give each applicant information about how to use the online auction system, including the pre-bidding phase and clock rounds in the primary stage, secondary stage and assignment stage. This is typically provided through a bidder user guide. In this auction, the bidder user guide will be provided to applicants after the application deadline rather than after the eligibility deadline. This will provide bidders with a greater opportunity to familiarise themselves with the auction system before the auction.

Section 33 Provisional start demand validity rules for application

For the purposes of making a valid application, a provisional start demand of an applicant for lots of a product is valid if:

- it does not exceed the applicant's allocation limits across:
 - the major population area; or
 - the regional area; and
- the number of lots for the provisional start demand of the product is not greater than the supply of the product.

Section 34 Applicants to notify the ACMA if application information incorrect

This section requires an applicant to provide the ACMA with correct information, if it becomes aware that information in its application is incorrect or has become incorrect. The auction manager may correct the information in the application if the auction manager is satisfied that the information is incorrect, such as where it contains a clerical error or an obvious mistake or omission.

After the application deadline, the auction manager cannot change whether a set-aside applicant did or did not elect to take up set-aside lots.

Section 35 Applicant to make statutory declaration

To ensure that affiliated applicants do not participate in the auction as separate bidders, the ACMA has included procedures to identify affiliated applicants before the commencement of the auction. This provision sets out the requirements that will assist the ACMA to identify whether any 2 or more applicants are affiliated.

After the application deadline, the ACMA must provide each applicant with a list of all other applicants, and the persons those applicants have identified as their associates. The information distributed will be based on details provided as part of each person's application. The application form includes a requirement for applicants to provide information about themselves as well as their associates.

The ACMA will ask each applicant to identify from the list provided by the ACMA whether they are affiliated with any other applicant. Under this section, applicants must then make a statutory declaration to the ACMA stating whether they are affiliated with another applicant and, if so, giving details of that affiliation. The ACMA will state a deadline by which the statutory declaration must be received, which will be at least 10 working days after the date of the ACMA's request.

Section 36 Failure to give statutory declaration

This section provides if an applicant fails to provide a statutory declaration in accordance with section 35, the applicant is taken to have withdrawn from the auction. This includes a set-aside participant who fails to provide a statutory declaration. In this case, the set-aside participant would not be allocated their set-aside lots.

Section 37 Procedure if ACMA satisfied applicants are affiliated

This section sets out the options available to a group of 2 or more applicants where the ACMA is satisfied that they are affiliated. The aim of this section is to assist applicants that are affiliated by providing them with some options that they may use to resolve any affiliation so as to enable their participation in the auction.

Under this section, the ACMA must write to each affiliated applicant and explain the reasons why it considers them to be affiliated. The ACMA must also tell all affiliated applicants of the options available to them under this section. Affiliated applicants are required to notify the ACMA in writing

within 8 working days of the ACMA's notification of which option they propose to take. The options available to affiliated applicants under this section are:

- (a) to withdraw the applications of all the affiliated applicants and submit a new application, as a single new applicant, under section 38; or
- (b) to withdraw the applications of all but one of the affiliated applicants.

Under this section, all of the affiliated applicants are taken to have withdrawn their applications if the applicants do not respond to the ACMA within 8 working days of the notification. An affiliated applicant is also taken to have withdrawn if it is one of a remaining group of 2 or more affiliated applicants who have not informed the ACMA of their intention to withdraw. This includes a set-aside participant who is an affiliated applicant. In this case, the set-aside participant would not be allocated their set-aside lots.

Section 38 Requirements for new application

This section provides an opportunity for affiliated applicants to participate in the auction as a single bidding entity in a manner that will ensure that the allocation limits are not exceeded. It allows one or all of a group of affiliated applicants who have withdrawn their applications under subsection 37(1) to make a new application as a single applicant. It sets out the process and timeframe for lodging a new application. A new application made under this section must be accompanied by payment of an additional application fee. New applications can only be lodged by a body corporate whose only members are one or more of the group of affiliated applicants.

New applicants will have 8 working days from the time that they are notified of being an affiliated applicant to submit a completed application form and pay the application fee to the ACMA.

After receiving the application form and application fee, the ACMA will give each applicant, including the new applicant, updated details of all other applicants who have not withdrawn and their associates.

If the new applicant is a set-aside applicant and it elects to take up set-aside lots in its application form, it becomes a **set-aside participant**.

New applicants will then have 3 working days (or a longer period if the ACMA agrees) from the time they are given the updated details of all applicants and their associates to submit:

- a completed deed of acknowledgement;
- a completed deed of confidentiality; and
- a completed statutory declaration stating that the new applicant is not affiliated with any other applicant in the updated list of applicants.

The new applicant must also give the ACMA a completed eligibility nomination form, and an eligibility payment or deed of financial security or a combination of both, by the eligibility deadline (or extended eligibility deadline, if there is one), or a later time if the ACMA agrees to a longer period. If a deed of financial security is given to the ACMA by email, then the original deed must be received by the ACMA within 3 working days of the deadline (unless the ACMA agrees to a longer period).

If a new applicant who is a set-aside participant does not give the ACMA a completed eligibility nomination form, and an eligibility payment or deed of financial security or a combination of both, by the eligibility deadline (or extended eligibility deadline, if there is one), it is not entitled to bid in the primary stage and the secondary stage. Any other applicant is taken to have withdrawn its application.

If the ACMA is satisfied that the new applicant is affiliated with one or more other applicants who has not withdrawn their application, including a new applicant, the new applicant and the other applicants are taken to have withdrawn their applications.

Section 39 Initial auction information provided to new applicants

After an application is made under section 38, the ACMA must give the new applicant information about how to use the online auction system, including the pre-bidding phase and clock rounds in the primary stage, secondary stage and assignment stage. This is typically provided through a bidder user guide.

Section 40 Compliance or non-compliance with allocation limits procedures – effect on supply of 900 upper products

This section addresses the situation where the number of lots of the 900 upper major population and 900 upper regional products available in the primary stage changes as a result of a set-aside participant being taken to have withdrawn its application, or where a new applicant under section 38 is a set-aside participant. In these circumstances, the ACMA may decide to vary the eligibility deadline and approve a varied eligibility nomination form, which includes updated information about the supply of lots in those products.

The varied eligibility deadline must be later than the original eligibility deadline. However, if the ACMA varies the eligibility deadline after it has passed, the varied extended eligibility deadline must be later than the day on which the ACMA makes its decision.

If there are no set-aside participants remaining in the auction, then no set-aside lots are allocated to set-aside participants under section 62 and Schedule 1.

If the ACMA varies the eligibility deadline, it must also:

- approve a varied eligibility nomination form; and
- tell each applicant how many set-aside participants there are; and
- if there is only one set-aside participant – tell each applicant the identity of the set-aside participant;
- tell each applicant the supply of:
 - the 900 upper major population product; and
 - the 900 upper regional product
- give each applicant a copy of the varied eligibility nomination form.

The varied eligibility nomination form must include a guide for applicants to assist them to:

- specify their provisional start demand for each product; and
- calculate their maximum eligibility points; and
- select or not select a provisional MSR for each product.

If the ACMA varies the eligibility deadline, any other references throughout the determination to an eligibility deadline or eligibility nomination form is taken to be a reference to the varied eligibility deadline or varied eligibility nomination form.

Division 4 Maximum eligibility points, provisional minimum spectrum requirements and securing eligibility points

Section 41 Maximum eligibility points and provisional minimum spectrum requirements

This section specifies that the maximum eligibility points that an applicant may nominate in its completed eligibility nomination form (or updated eligibility nomination form) is the sum of, for each product, the lot rating multiplied by the applicant's provisional start demand for that product.

The provisional start demands that an applicant may express are restricted by the available lots of each product and the allocation limits.

If in its eligibility nomination form an applicant does not specify a provisional MSR for a product, it is taken to have no MSR for that product.

Section 42 Eligibility payment or deed of financial security required for maximum eligibility points

This section describes how an applicant secures the maximum eligibility points specified in its eligibility nomination form and the consequences for failing to do so. These arrangements differ depending on whether or not the applicant is a set-aside participant.

An applicant secures its maximum eligibility points by making an eligibility payment, or providing a deed of financial security, or a combination of both. The amount to be paid or secured is 10% of the value of the applicant's provisional start demands at the starting prices. In addition to this amount, a set-aside participant must add 10% of the value of the set-aside lots at the relevant starting prices.

If an applicant makes an eligibility payment or gives a deed of financial security (or both) for an amount less than the amount required to secure their nominated lots, the ACMA will notify the applicant. An applicant has until the eligibility deadline (or extended eligibility deadline, if there is one), or 3 working days from the date they are notified by the ACMA of the underpayment (whichever is later), to provide the ACMA with an additional eligibility payment and/or deed of financial security to make up the balance to secure the maximum eligibility points specified in its eligibility nomination form.

If an underpayment remains after this period, the ACMA will reduce the applicant's maximum eligibility points and start demands to a level commensurate with the eligibility payment made or the deed of financial security given (or both). Subsection (4) describes how the ACMA will calculate this reduction for an applicant who is not a set-aside participant. Subsection (5) describes how the ACMA will calculate this reduction for a set-aside participant. The main difference for a set-aside participant is that its set-aside lots must be secured before any other lots. If a set-aside applicant's amount is insufficient to secure its set-aside lots, it is not entitled to bid during the primary stage and the secondary stage. It will still be allocated their set-aside lots, and be able to bid in the assignment stage for a frequency range option for those lots.

If, as a result of the reductions described in subsections (4) and (5), an applicant has zero maximum eligibility points or no provisional start demands, then:

- for a set-aside participant, it is not entitled to bid in the primary stage and the secondary stage;
- for any other applicant, it is taken to have withdrawn its application

Subsection (8) requires the ACMA to tell an applicant in writing if its eligibility points or start demands have been reduced, if it is not entitled to bid in the primary stage and the secondary stage, or if it is taken to have withdrawn its application.

Under subsection (9), a deed of financial security given to the ACMA must be executed by:

- (a) an authorised deposit-taking institution within the meaning given by the *Banking Act 1959*; or
- (b) a person authorised to carry on business in Australia as an insurer under the *Insurance Act 1973*; or
- (c) a Lloyd's underwriter authorised to carry on insurance business under Part VII of the *Insurance Act 1973*.

If a deed of financial security is executed by a person acting under a power of attorney, the applicant must give a copy of the power of attorney to the ACMA.

If the ACMA is not satisfied that the person executing a deed of financial security is a person mentioned in subsection (9) or the applicant fails to provide a copy of the power of attorney, then:

- for a set-aside participant, it is not entitled to bid in the primary stage and the secondary stage;
- for any other applicant, it is taken to have withdrawn its application.

The ACMA must tell an applicant if it is not entitled to bid in the primary stage and the secondary stage, or is taken to have withdrawn its application.

Where the ACMA reduces an applicant's maximum eligibility points under subsection (4) or (5) and some products have the same lot rating, the ACMA may select the order in which the products are removed from the applicant's provisional start demand.

Division 5 Changes to starting prices, and related matters

This Division provides for the ACMA to vary a starting price in the auction and sets out the process for doing so. The ACMA may also vary a lot rating if it varies a starting price. The Division describes how existing applicants may update their application documents or withdraw from the auction, and how new persons may apply to participate in the auction. It also describes the new application deadline and the extended eligibility deadline which will apply. Additionally, it sets out the process for the ACMA to check that any new applicants are not affiliated with existing applicants or other new applicants for the purpose of enforcing the allocation limits, similar to the provisions in sections 35 to 38.

Section 43 Varying starting prices, lot ratings and set-aside prices, and setting new deadlines

This section provides for the ACMA to vary a starting price in the auction up to 5 working days before the eligibility deadline. If it does so, it may also vary a lot rating. If it varies the starting price for a 900 upper major population or 900 upper regional product, it will have to vary the set-aside price for a set-aside lot of that product to be between 20 to 30% above the new starting price.

If the ACMA varies a starting price, it must set:

- a new application deadline, being at least 20 working days after the date of the variation; and
- an extended eligibility deadline, being at least 30 working days after the new application deadline.

This provides an opportunity for existing applicants to update or withdraw their applications, and for new applicants to apply to participate in the auction.

The variation of the starting prices and set-aside prices relates to the fixing of spectrum access charges set under Division 2 of Part 6 of the determination for the purpose of section 294 of the Act. These parts of section 43 are therefore disallowable under section 42 of the LA.

The ACMA must approve an updated eligibility nomination form that contains the varied starting prices and lot ratings.

As soon as practicable after varying a starting price, the ACMA must publish information on its website about the varied starting prices, lot ratings and set-aside prices, the new application deadline and the extended eligibility deadline.

Section 44 Notice of updated documents

This section requires the ACMA, if it varies a starting price, to notify all applicants that:

- they must give the ACMA an updated eligibility nomination form before the extended eligibility deadline;

- if necessary, they may make an additional eligibility payment and/or give an additional deed of financial security before the extended eligibility deadline;
- if necessary, they may update their application form before the new application deadline.

Section 45 Giving replacement application form

This section provides that an applicant may give the ACMA a new application form to replace its original application form before the new application deadline. If a set-aside applicant changes its set-aside election in its new application form, it may become or cease to be a **set-aside participant**.

Section 46 Updating eligibility nomination form and financial security

This section sets out the requirements in relation to existing applicants after the ACMA notifies them that it has varied a starting price.

As soon as practicable after the new application deadline, the ACMA must give each applicant a copy of the updated eligibility nomination form. If there is only one set-aside participant, it must also tell each applicant the identity of the set-aside participant.

Applicants must give the ACMA the updated eligibility nomination form by the extended eligibility deadline. The form must specify the applicant's:

- provisional start demands; and
- maximum eligibility points; and
- MSR selections.

If it does not do so:

- for a set-aside participant, it is not entitled to bid in the primary stage and the secondary stage;
- for any other applicant, it is taken to have withdrawn its application.

An applicant may make an additional eligibility payment and/or update a deed of financial security before the extended eligibility deadline (e.g. by replacing or supplementing a deed of financial security). If the deed is given by email to the ACMA, the original deed must be received within 3 working days after the extended eligibility deadline, unless the ACMA agrees to a later time. If it fails to do so:

- for a set-aside participant, it is not entitled to bid in the primary stage and the secondary stage;
- for any other applicant, it is taken to have withdrawn its application.

The ACMA must tell an applicant in writing if it is not entitled to bid in the primary stage and the secondary stage, or is taken to have withdrawn its application under this section.

Section 47 Notice inviting new applicants to the auction

This section requires the ACMA, if it varies a starting price, to publish a notice inviting persons who are not already applicants to participate in the auction. The notice must also state:

- the new application deadline;
- the extended eligibility deadline;
- that applications may only be withdrawn before the extended eligibility deadline;
- that the application information package (with changes) can be obtained at the ACMA website.

If a matter in the notice changes, the ACMA must publish another notice giving details of the change. The ACMA may publish the information required by section 47, or other information about the auction, by additional methods.

Section 48 Making an application – new applicants to the auction

This section sets out how a person who is not already an applicant may apply to participate in the auction, if the ACMA has varied a starting price. This includes any applicant who has already withdrawn, or was taken to have withdrawn, its application.

In order to apply to become a registered bidder in the auction, a new applicant must give the ACMA a completed application form, deed of acknowledgment, deed of confidentiality and pay the application fee before the new application deadline. If a new applicant is a set-aside applicant and elects to take up set-aside lots, it becomes a **set-aside participant**.

The ACMA must give each new applicant a copy of the updated eligibility nomination form as soon as practicable after the new application deadline. If there is only one set-aside participant, it must also tell each new applicant the identity of the set-aside participant.

After the new application deadline and no later than the extended eligibility deadline, a new applicant must give the ACMA a completed updated eligibility nomination form and make an eligibility payment or give a deed of financial security, or a combination of both. If the deed of financial security is given to the ACMA by email, the original deed must be received within 3 working days after the extended eligibility deadline (unless the ACMA agrees to a longer period).

If a new applicant does not comply with these requirements:

- for a set-aside participant, it is not entitled to bid in the primary stage and the secondary stage;
- for any other applicant, it is taken to have withdrawn its application.

In either case, the ACMA must tell the new applicant in writing.

A new applicant may update its application documents no later than the new application deadline, and update its eligibility documents no later than the extended eligibility deadline.

Section 49 Initial auction information provided to new applicants when starting prices changed

After a new application is made under section 48, the ACMA must give each new applicant information about how to use the online auction system, including the pre-bidding phase, primary stage, secondary stage and assignment stage. This is typically provided through a bidder user guide.

Section 50 Statutory declarations and affiliations – where there are new applicants to the auction

This section describes how the ACMA checks that a new applicant is not affiliated with existing applicants or other new applicants for the purposes of enforcing the allocation limits, similar to the provisions in sections 35 to 38.

If the ACMA receives a new application, after the new application deadline it must:

- provide each applicant with updated details about the identity of all other applicants and their associates;
- ask each applicant to make a statutory declaration stating whether it is affiliated with another applicant and, if so, the details of that affiliation.

The ACMA must set a deadline for receiving the statutory declaration, which is at least 10 working days after the date of the request. If an applicant does not make the statutory declaration by the deadline, it is taken to have withdrawn its application. This includes a set-aside participant who fails to provide a statutory declaration. In this case, the set-aside participant would not be allocated their set-aside lots.

If the ACMA is satisfied that 2 or more applicants are affiliated, it will apply the procedures in sections 37 and 38.

Section 51 Changes to applicants as a result of this Division – effect on supply of 900 upper products

This section addresses the situation where the ACMA has varied a starting price, and the number of lots of the 900 upper major population and 900 upper regional products available in the primary stage changes as a result of any of the following:

- a set-aside participant withdraws its application or is taken to have withdrawn its application;
- a set-aside participant submits an application under section 38 (that is, from a body corporate made up of one or more affiliated applicants);
- a set-aside participant submits an application under section 48 (that is, a new application after the ACMA has varied a starting price).

In these circumstances, the ACMA may vary the extended eligibility deadline and approve a varied updated eligibility nomination form, which includes updated information about the number of lots available in the primary stage.

If there are no set-aside participants remaining in the auction, then no set-aside lots are allocated to set-aside participants under section 62 and Schedule 1.

If the ACMA varies the extended eligibility deadline, it must also:

- approve a varied updated eligibility nomination form; and
- tell each applicant how many set-aside participants there are; and
- if there is only one set-aside participant – tell each applicant the identity of the set-aside participant;
- tell each applicant the supply of:
 - the 900 upper major population product; and
 - the 900 upper regional product
- give each applicant a copy of the varied updated eligibility nomination form.

The varied eligibility nomination form must include a guide for applicants to assist them to:

- specify their provisional start demand for each product; and
- calculate their maximum eligibility points; and
- select or not select a provisional MSR for each product.

If the ACMA varies the extended eligibility deadline, any other reference throughout the determination to an extended eligibility deadline or updated eligibility nomination form or completed updated eligibility nomination form is taken to be a reference to the varied extended eligibility deadline or varied updated eligibility nomination form or completed varied updated eligibility nomination form.

Division 6 Withdrawal of applications

Section 52 Withdrawal of application

This section describes how and when an applicant may withdraw from the auction, and the consequences of withdrawing an application.

An applicant other than a set-aside participant can withdraw its application any time before the eligibility deadline (or extended eligibility deadline, if there is one), by giving the ACMA notice in writing. An applicant who has withdrawn will not be re-admitted to the auction and cannot be allocated spectrum under the determination. However, if the ACMA varies a starting price under subsection 43(1), a withdrawn applicant may apply to become a registered bidder.

Any eligibility payment amount paid by an applicant who withdraws before the eligibility deadline (or extended eligibility deadline, if there is one), or who is taken to have withdrawn under other sections of the determination, will be refunded within the period specified in subsection 73(2), subject to sections 85 and 87 of the determination.

A set-aside participant may only withdraw its application if the ACMA varies a starting price under subsection 43(1), and it gives notice in writing within the period between the ACMA notifying the set-aside participant under section 44 and the new application deadline.

Division 7 Registration of bidders

This Division sets out the obligations on the ACMA to maintain a register of bidders and explains the procedure for bidders to be registered. It also describes the information that the ACMA will provide to bidders once they are registered.

Section 53 Register of bidders

This section requires the ACMA to maintain an electronic register of bidders and lists the information the register must contain for each bidder. It also requires the ACMA to keep details on the register up-to-date if advised by a bidder or it otherwise becomes aware of any incorrect information. The ACMA must not change in the register whether the bidder is a set-aside participant.

Section 54 Registration process

This section sets out the following requirements for a person to be registered as a bidder in the auction:

- the later of the eligibility deadline or extended eligibility deadline (if there is one) has passed;
- the person has made a valid application;
- if the person is not a set-aside participant, it has made an eligibility payment or given the ACMA a deed of financial security, or a combination of both;
- the person has not withdrawn or is not taken to have withdrawn;
- otherwise than in relation to a set-aside participant, any deed of financial security is executed by a person mentioned in subsection 42(9).

This section also requires the ACMA to notify an applicant that it is registered as a bidder after the eligibility deadline or extended eligibility deadline (if there is one). At that time, the ACMA will provide each bidder with:

- a copy of the information recorded in the register for the bidder;
- the contact details for the ACMA;
- whether the bidder is a set-aside participant;
- information about how to access the auction system;
- information about how to make an entry and a bid by alternative methods, if the bidder cannot use the auction system.

Section 55 Bidders to notify the ACMA if register incorrect

The section creates an ongoing responsibility for a bidder to tell the ACMA if any of the information about the bidder or its associates on the register of bidders is incorrect. If any information is incorrect, the bidder must immediately give the ACMA the correct information.

The auction manager may correct the information on the register if the auction manager is satisfied that the information is incorrect, such as where it contains a clerical error or an obvious mistake or omission. The auction manager must not change whether the bidder is a set-aside participant.

Division 8 Preparation for bidding and scheduling rounds of the auction

This Division requires the ACMA to give registered bidders an opportunity to trial the auction system prior to auction commencement, requires bidders to store auction system information securely, and sets out the procedures for scheduling auction rounds.

Section 56 Preparation for bidding

This section provides that the ACMA will give each bidder an opportunity to trial the auction system prior to the start of the auction.

Section 57 Security of the auction

This section requires bidders to ensure that the security of the auction system is maintained. A bidder must keep secure any information and items provided to the bidder for the purpose of accessing the auction system. If such items are lost or stolen, a bidder must immediately notify the ACMA.

Section 58 Auction rounds

This section sets out the requirement to schedule the rounds of the auction for the primary stage, secondary stage and assignment stage. The first clock round of the primary stage of the auction starts on the date and time for that clock round set by the auction manager under paragraph 59(1)(a) of the determination.

Section 59 Pre-bidding phase and first clock round

This section outlines the requirement that, after the later of the eligibility deadline (or extended eligibility deadline, if there is one), the auction manager must set the start date and start time of the first clock round of the primary stage of the auction. The auction manager must also set the start date and start time of the pre-bidding phase, which must fall within the 48 hours before the start date and start time of the first clock round of the primary stage. The pre-bidding phase must last for at least 3 hours.

At least 10 working days before the start date of the pre-bidding phase, the auction manager must notify bidders of:

- the start date, start time and duration of the pre-bidding phase; and
- the start date and start time of the first clock round of the primary stage.

Part 5—Auction procedures, and allocation of set-aside lots

Division 1 Procedures to be applied for auction and allocation of set-aside lots

This Division outlines procedures for conducting the auction, allocating set-aside lots, special rules if only one bidder participates, the auction manager's powers and enforcement of allocation limits during the auction period. Detailed rules for allocating set-aside lots, bidding and bid processing can be found in Schedules 1, to 4 to the determination.

Section 60 Auction stages

This section outlines details of the 3 stages of the auction, the primary stage, the secondary stage and the assignment stage.

The primary stage is made up of 3 components:

- Pre-bidding phase—The auction manager enters into the auction system the provisional start demands and provisional MSRs specified by bidders in their eligibility nomination forms. During the pre-bidding phase, bidders have the opportunity to confirm or change their provisional start demands and provisional MSRs in the auction system. These selections are final and binding.

- Clock rounds—The auction manager then conducts one or more auction clock rounds for the making of bids on lots of a product, and provides the results of each clock round after it is completed.
- Final results determination—When all the clock rounds have been completed and the final demands for the lots of each product allocated to a primary winner and the associated primary prices have been determined, the final results are posted.

The secondary stage is made up of 2 components:

- one or more rounds for bidding on residual lots.
- determining winning final high bids and secondary winners and secondary prices, after the bidding rounds are completed.

The assignment stage is made up of 4 components:

- one or more assignment rounds for bidding on frequency ranges for all other lots that were allocated in the primary stage and the secondary stage, and any set-aside lots.
- determination of the winning assignment bids and the associated assignment prices. The total assignment price is determined after all assignment rounds are completed.
- allocation of the downshift metropolitan lot, if the one lot of the 900 lower major population product was allocated to a bidder.
- allocation of the downshift regional lot, if the one lot of the 900 lower regional product was allocated to a bidder.

As part of the determination of the winning assignment bids and the associated assignment prices, there will be the automatic assignment of frequencies to the winner of the one lot of the 900 lower major population product, and to the winner of the one lot of the 900 lower regional product.

Section 61 Procedures if only one bidder

This section applies where there is only one bidder participating in the auction. The ACMA must notify the bidder as soon as reasonably practicable after the eligibility deadline or extended eligibility deadline (if there is one), that it is the only bidder, and that the procedures in this section apply. Following bidder notification, the auction manager will conduct the pre-bidding phase and one clock round in the primary stage using the auction system in which the bidder may make a bid for the lots of each product (subject to its eligibility points). As soon as possible after the primary stage is completed, the assignment stage will be conducted to enable the bidder to indicate the frequency ranges the bidder wishes to have assigned. In this case, the assignment prices will be zero.

Section 62 Procedures in relation to set-aside lots

Subsection (1) applies if any set-aside participant elects to take up a set-aside lot. In that case, the allocation procedures for set-aside lots outlined in Schedule 1 take effect immediately before the pre-bidding phase of the primary stage.

Subsection (2) applies if there are no set-aside participants. In that case, Schedule 1 has no effect.

Section 63 Rounds of the auction

This section provides that the rounds of the primary stage, the secondary stage and the assignment stage will be conducted in accordance with the rules set out, respectively, in Schedules 2, 3 and 4 to the determination.

The clock rounds for the primary stage of the auction are to be conducted in accordance with the rules in Schedule 2. The rounds for the secondary stage of the auction, if required, are to be conducted in accordance with the rules in Schedule 3. The assignment rounds for the assignment stage of the

auction, and the allocation of the downshift lot, are to be conducted in accordance with the rules in Schedule 4.

Section 64 Auction manager's discretion to accept entries and bids

This section addresses unanticipated circumstances that may arise during the auction that prevent a bidder from being able to use the auction system to submit a bid for a round in the primary stage, secondary stage or assignment stage, or to make an entry in the pre-bidding phase of the primary stage. For example, a sudden power blackout may cut a bidder's computer access to the auction system. Subsection (1) gives the auction manager the discretion to permit an entry or bid to be submitted by an alternative method. Bidders will receive information about how they can submit an entry or bid if they are unable to use the auction system once they are registered under section 54.

Subsection (2) gives the auction manager discretion to permit a bidder to submit an entry in the pre-bidding phase or a bid during any of the auction stages after the bidding period for a round has ended. However, they must be satisfied that technical or communication problems have prevented the bidder from doing so during the pre-bidding phase or round in the auction. Entries or bids that have been submitted in this way will be regarded as valid entries or bids made during the pre-bidding phase or round. An entry or bid cannot be submitted after information about the outcome of the pre-bidding phase or round has been given to bidders.

Section 65 Action that auction manager may take in exceptional circumstances

Exceptional circumstances may arise that affect the auction. If the auction manager is satisfied that these have arisen, a range of actions may be taken. These actions include correcting entries made in the pre-bidding phase, the results or bidder information for the most recent round of the auction, stopping the pre-bidding phase or current round of the auction and restarting a round, cancelling the results of one or more rounds and restarting the auction from the point before those rounds, restarting the auction from the first round, or suspending the auction. These actions could occur in the pre-bidding phase or clock rounds in the primary stage, rounds in the secondary stage or assignment rounds in the assignment stage.

Examples of exceptional circumstances that could permit the auction manager to take discretionary action under this provision include significant technical difficulty with the auction system and a breach of the confidentiality obligation. These examples are not exhaustive and do not preclude other circumstances from being regarded as exceptional.

Division 2 Affiliations during the auction

Section 66 Affiliation between bidders during auction period not permitted

This section states that a bidder must not be affiliated with another bidder during the auction period (as defined in section 4). If the ACMA is satisfied that a breach of this provision has occurred, the ACMA may take action under the enforcement provisions in section 85.

Section 67 Requirement to report affiliation

Under this provision, a bidder is obliged to immediately tell the ACMA in writing if the bidder believes that it may be affiliated with another bidder during the auction period, noting the identity of the other bidder and the details of the affiliation.

Section 68 Auction continues despite possible affiliation

This section states that if the ACMA becomes aware during the auction period that 2 or more bidders may be affiliated, the auction will proceed normally and any bidders who may be affiliated are permitted to continue to participate.

Section 69 Consideration of affiliation

This section requires that if the ACMA forms the belief that an affiliation exists during the auction period, it must notify the affiliated bidders in writing and inform them of the basis on which it considers them to be affiliated.

If a bidder gave the ACMA information under section 67 about a potential affiliation during the auction period and the ACMA does not consider that an affiliation exists, then the ACMA must notify that bidder of its view.

Division 3 Statement by primary winners, secondary winners and set-aside participants about affiliations

This Division ensures that the ACMA does not allocate spectrum licences that would cause a bidder to exceed the allocation limits during the auction period by reason of affiliation.

Section 70 Primary winners, secondary winners and set-aside participants to make statement about affiliations

If a potential affiliation between bidders is identified under subsection 69(1), this section requires the ACMA to take the following actions between the end of the secondary stage (if there is one) or primary stage (if there is no secondary stage) and the start of the assignment stage:

- give each primary winner and secondary winner details about the identity of all other primary winners, secondary winners and set-aside participants;
- give each set-aside participant who is not also a primary winner or secondary winner details about the identity of all primary winners, secondary winners and other set-aside participants;
- ask each primary winner and secondary winner to make a statement about whether it is affiliated with another primary winner, secondary winner or set-aside participant, and give details of the affiliation;
- ask each set-aside participant to make a statement about whether it is affiliated with a primary winner, secondary winner, or another set-aside participant, and give details of the affiliation.

The ACMA must state a deadline for receiving this statement at least 10 working days after the date of the request. Giving false or misleading information in such statements is a serious offence under the *Criminal Code*.

Section 71 Notification of affiliation

This section states that the ACMA must notify primary winners, secondary winners and set-aside participants if it is satisfied that they were affiliated before the end of the primary stage (if there is no secondary stage) or secondary stage (if there is one), and the basis of that affiliation.

Section 72 Consequence of affiliation

This section has the effect that the ACMA will combine the total spectrum won by affiliated persons up to the allocation limits.

If the ACMA notifies 2 or more affiliated persons under section 71 that it is satisfied the bidders are affiliated, the ACMA must not allocate spectrum licences to the bidders that would exceed the allocation limits.

In these circumstances, affiliated persons may provide a direction to the ACMA specifying how the spectrum is to be allocated between them within the allocation limits. Such a direction must be given jointly by the affiliated bidders. However, if one of the affiliated persons is a set-aside participant, the direction must not affect the allocation of a set-aside lot to the participant.

If no direction is provided within 5 working days after the ACMA notifies the bidders of the affiliation, the ACMA may, for any part of the spectrum where the lots won by the bidders exceed the allocation limits, choose at its discretion how to allocate spectrum to each bidder up to the allocation limits. If one of the affiliated persons is a set-aside participant, the ACMA's decision must not affect the allocation of a set-aside lot to the participant.

Any spectrum not allocated, because allocating it would be in excess of the allocation limits, will be treated as unallocated. The winning bidders must still pay the full balance of the winning price:

- for all the lots allocated in the primary stage and the secondary stage, despite receiving a smaller allocation as a result of this section; and
- if the winning bidder is a set-aside participant, calculated in relation to the set-aside lot; and
- for all frequency ranges assigned to those lots in the assignment stage.

Part 6—Procedures after auction

This Part describes the procedures and processes that will apply after the auction concludes. It includes details of how auction results will be confirmed and published, as well as outlining licence payment procedures before issuing spectrum licences. Further details concerning licence payment procedures are set out in Schedule 5 to the determination.

Division 1 Notices and refunds to withdrawn applicants and unsuccessful bidders

This Division outlines the procedures to be followed by the ACMA with unsuccessful and withdrawn bidders after the auction concludes.

Section 73 Notice and refunds to withdrawn applicants

This section requires the ACMA to notify each applicant that withdrew, or was taken to have withdrawn, that they are no longer bound by the confidentiality obligation under section 19. This must be done as soon as practicable after the end of the auction period. This section also provides that withdrawn applicants who have made eligibility payments will have these payments refunded no later than 6 months after this notification, except where the ACMA has decided to retain the eligibility payment under section 85 due to a breach of the auction rules.

Section 74 Notice and refunds to unsuccessful bidders

This section sets out that the ACMA must, as soon as practicable after the auction, notify each unsuccessful bidder that they have not won any spectrum and that their confidentiality obligation under section 19 will end when the ACMA publishes the auction results under subsection 79(1).

The ACMA must refund any eligibility payment made by the unsuccessful bidder no later than 6 months after notifying the bidder that they are unsuccessful, unless the ACMA has decided to retain the eligibility payment under section 85 due to a breach of the auction rules.

Division 2 Winning prices, payment and issue of spectrum licences

This Division outlines procedures for determining final payment amounts (spectrum access charges), the conditions of payment, and the issue of refunds. The Division, along with Schedule 5 to the Determination, also details the timing for spectrum licence issue, licence commencement, and the publication of auction results.

This Division fixes the spectrum access charges for issuing spectrum licences, for the purpose of section 294 of the Act. This Division is therefore disallowable under section 42 of the LA.

Section 75 Winning price and balance of winning price

This section describes how the winning price is calculated for each winning bidder. The winning price is the total of a bidder's primary price (if any), secondary price (if any), set-aside price (if any) and total assignment price (if any).

For a winning bidder, the balance of the winning price is the winning price minus any eligibility payments made by the bidder under, or for the purposes of, section 42.

Section 76 Results of the auction

This section describes what auction results are given by the auction manager to bidders.

After the winning bidders and winning prices are determined, the auction manager must tell each winning bidder:

- the number of lots of each product allocated to the winning bidder (including any set-aside lots);
- the frequency ranges assigned to the lots allocated to the winning bidder;
- whether the winning bidder was allocated the downshift metropolitan or the downshift regional lot under Schedule 4;
- the winning price to be paid by the winning bidder.

After the winning bidders and winning prices are determined, the auction manager must tell all bidders:

- the names of all winning bidders;
- the frequency ranges for lots (including set-aside lots) allocated in the auction;
- the winning price paid, or to be paid, by each winning bidder;
- the posted price of all products in the final clock round of the primary stage.

The ACMA will not provide bidders with any further auction results information, other than that mentioned in subsection (2) and subclause 18(2) of Schedule 2, unless all bidders agree in writing or it is required by law.

Section 77 Sufficient eligibility payment—issue of spectrum licence without further payment

This section applies to a winning bidder who made an eligibility payment no later than the eligibility deadline. If its eligibility payment is greater than its winning price (that is, its balance of the winning price is less than zero), the ACMA must refund that part of the eligibility payment that is in excess of the total of the winning price. It must provide the refund within 6 months after giving the notice under subsection 76(1). The bidder is entitled to be issued a spectrum licence for each part of the spectrum allocated to the bidder without further payment. If the bidder won the downshift metropolitan lot or the downshift regional lot, they are entitled to be issued spectrum licences for those lots.

If the balance of the winning price for a winning bidder is equal to zero, it is entitled to be issued a spectrum licence for each part of the spectrum allocated to the bidder without further payment. If the bidder won the downshift metropolitan lot or the downshift regional lot, they are entitled to be issued spectrum licences for those lots.

This section does not apply if the ACMA decides to retain an eligibility payment under section 85.

Section 78 Payment of balance of winning price

This section provides that where a winning bidder's balance of the winning price is greater than zero, they must pay it in accordance with the provisions in Schedule 5 to the determination.

Section 79 Publication of auction results

This section sets out that after the end of the auction period, the ACMA must announce or publish:

- the names of the winning bidders;
- the spectrum allocated to each winning bidder;
- the winning price paid, or to be paid, by each winning bidder;
- the posted price of all products in the final clock round of the primary stage.

The final posted price of each product at the end of the primary stage is of public interest, since it enables analysis of the relative values of the spectrum products offered at auction and comparison with international spectrum allocations.

Before it publishes this information, the ACMA must notify each winning bidder that it will announce or publish the auction results, and that its confidentiality obligation will end when the auction results are announced or published. The ACMA will not publish any further auction results information unless all bidders agree in writing, or unless required by law.

Part 7–Miscellaneous

This Part describes various miscellaneous matters that apply to the auction process, including the treatment of unallocated spectrum, and various enforcement procedures. It also sets out information that the ACMA may obtain from applicants and bidders, as well as the treatment of information provided to the ACMA by applicants and bidders.

Section 80 Unallocated spectrum

This section provides that the ACMA may allocate any spectrum remaining unallocated after the auction using a procedure to be determined.

Section 81 Applicants and bidders must not misuse auction system

This section provides that an applicant or bidder must only access and use the auction system in accordance with the information provided by the ACMA under section 32, section 39, section 49 or paragraphs 54(2)(d) or (e). A bidder must not attempt to interfere with, disrupt or damage the auction system, or use it to breach a law of the Commonwealth.

Section 82 The ACMA may obtain information from applicants and bidders

The ACMA may wish to obtain information or documents from an applicant or bidder for a number of reasons, including for the purposes of determining whether any contravention of the determination has occurred, or considering whether applicants or bidders are affiliated.

If the ACMA has reason to believe that an applicant or bidder has information or documents that are relevant to the performance of any of the ACMA's functions or the exercise of its powers under the determination, the ACMA may, by written notice, require the applicant or bidder to give to the ACMA, within the period and in the manner and form specified in the notice, any such information or to produce to the ACMA, within the period and in the manner specified in the notice, any such documents.

The ACMA may require the information or documents requested of an applicant or bidder under this section to make decisions which could have a significant impact on their participation in the auction. This provision includes a note that if a requirement in a notice given under this section is breached, including failure to provide available information or documentation when requested, the ACMA may take action under section 85 of the determination. It is not an offence, or subject to a pecuniary penalty, not to provide the information or documentation.

The ACMA may vary any such notice given.

Section 83 Use of information and documents by the ACMA

Under this section, the ACMA may use any information or documents it obtains in the performance of the ACMA's functions or exercise of powers under the determination for the purposes of the determination, including disclosing or publishing information or documents as provided for in the determination. The ACMA may also use the information or documents to perform its functions in relation to a spectrum licence to be issued, or issued, as a result of the allocation process under the determination. The ACMA may keep a document obtained under this section for as long as necessary for the performance of any of its functions or exercise of its powers under the determination or the Act.

The ACMA may also disclose information or documents as permitted by Part 7A of the *Australian Communications and Media Authority Act 2005 (ACMA Act)*, or as otherwise authorised by law.

Section 84 The ACMA to provide information to ACCC on request

This section requires the ACMA to provide specified information to the ACCC, where the ACCC has requested the information in relation to any applicant or bidder. Information that may be requested includes forms and deeds submitted by an applicant prior to and during the allocation process, information about an applicant's affiliations, and information about any breach of confidentiality obligations. It also includes information about bidding during the auction and information about the outcome of procedures set out in Part 6.

Section 85 Retention of eligibility payment or enforcement of deed of financial security for breach of auction procedures

This section sets out the action that the ACMA may take for a breach of provisions of the determination, such as the auction rules or related procedures. The ACMA may, on behalf of the Commonwealth, retain an eligibility payment paid, or enforce a deed of financial security given, by an applicant or bidder in any of the following circumstances:

- it is satisfied that an applicant or bidder, or a related person of the applicant or bidder, or a contractor of the applicant or bidder, breached a provision of the determination and that the breach affected, or may have affected, the outcome of the auction;
- it is satisfied that the applicant or bidder, or a related person of the applicant or bidder, or contractor of the applicant or bidder, breached the confidentiality obligation under section 19 before the confidentiality obligation came to an end;
- it is satisfied that the bidder breached section 66 concerning bidders becoming affiliated during the auction;
- the bidder is a primary winner, secondary winner or set-aside participant who failed to give the statement required under section 70 about affiliations;
- a winning bidder failed to pay the balance of the winning price as required under Schedule 5 to the determination;
- the applicant or bidder failed to comply with a requirement in a notice given under subsection 82(1), requiring the production of information or documents.

The ACMA must notify the applicant or bidder, in writing, of a decision under this section and the nature of the breach or failure, before the later of:

- 6 months after the end of the auction period; and
- 6 months after the day on which the breach or failure occurred.

Any amount retained or obtained by the ACMA under this section is forfeited to the Commonwealth unless the Federal Court orders its return under section 87.

Despite this section, it is not an offence, or subject to a civil penalty, to breach a provision of the determination.

Section 86 Effect of retention on winning bidders

This section provides that if the ACMA makes a decision under subsection 85(1) to retain an eligibility payment or enforce a deed of financial security provided by a winning bidder, then, despite section 77 and clause 4 of Schedule 5, the ACMA must not issue a spectrum licence to the bidder, and the spectrum allocated to the bidder is taken to be unallocated.

Section 87 Application to Federal Court for return of retained amount

This section provides that, where an applicant or bidder is notified by the ACMA of its decision to retain an eligibility payment or enforce a deed of financial security, the applicant or bidder may, within one year of receiving the notice, apply to the Federal Court for return of all or part of an eligibility payment or amount obtained by enforcing a deed of financial security.

On application, the Court may:

- if the Court is not satisfied that the applicant or bidder committed the breach identified in the notice given by the ACMA – order the return of all the amount retained by the ACMA; or
- if the Court is satisfied that the applicant or bidder committed the breach but considers that it would be disproportionate for the full amount to be retained – order the return of part of the amount retained by the ACMA.

This section does not enable the Federal Court to order that a spectrum licence be issued to an applicant or bidder. This section also does not remove any existing jurisdiction of a court.

Section 88 No liability of the ACMA, etc.

This section excludes the ACMA's, the auction manager's and the Commonwealth's liability in respect of damages or costs arising from any act or omissions of any person in relation to the auction procedures set out in the determination.

The auction of parts of the spectrum is likely to result in multiple sales of valuable assets at high prices. This section is intended to protect the public interest in relation to claims for damages or costs which may be brought in respect of the conduct of the auction. This section would not prevent a person from taking proceedings (including judicial review proceedings) or exclude the jurisdiction of any court. The section names both the ACMA and the Commonwealth, as although the ACMA does not have a separate legal identity to the Commonwealth, proceedings may still be brought in the name of the ACMA.

The section also names the auction manager, as the auction manager is typically a member of ACMA staff, and it would not be reasonable for the auction manager to be liable for damages or costs against their personal assets as a result of their good faith conduct of their duties as auction manager.

Section 89 Other rights not affected

This section makes it clear that the determination does not limit any right of action or remedy that the ACMA or the Commonwealth may have against any person.

Section 90 Auction manager may delegate functions and powers

The auction manager may delegate any of the auction manager's functions and powers under the determination to a member within the meaning of the ACMA Act; or a member of the ACMA staff that holds, or is acting in, an Executive Level 1 or 2 position or an equivalent position, or who is an SES employee or acting SES employee.

SCHEDULE 1 Allocation of set-aside lots for set-aside prices

Clause 1 Application of Schedule

This Schedule applies if one or more set-aside applicants elect to take up set-aside lots, as specified in subsection 62(1).

Clause 2 Allocation of set-aside lots

If there are any set-aside participants in the auction, each is allocated:

- one lot of the 900 upper major population product; and
- one lot of the 900 upper regional product;

immediately before the pre-bidding phase of the primary stage.

This matches the requirement in subsection 31(2) that a set-aside applicant must elect whether to take up both or neither of these lots.

SCHEDULE 2 Rules for the primary stage of the auction

Schedule 2 to the determination sets out the rules for the primary stage of the auction.

Part 1–Application and interpretation

Clause 1 Application of Schedule

If there are no set-aside participants, this clause provides that all lots of each product are available in the primary stage of the auction.

If there are one or more set-aside participants, the following lots are available in the primary stage of the auction:

- all lots of the 850 major population product;
- all lots of the 850 regional product;
- the lot of the 900 lower major population product;
- the lot of the 900 lower regional product.

For the 900 upper major population product and 900 upper regional product, all lots except for any set-aside lots taken up by set-aside participants are available in the primary stage of the auction.

Clause 2 Interpretation

This clause defines a number of key terms used throughout Schedule 2. This includes the meaning of *supply*, and its particular meaning for the 900 upper major population and 900 upper regional products. It also defines the *total value of lots*. Also, after a negative value for a decrease bid is entered, it is taken to have an absolute value.

Part 2–Processing of bids

Clause 2A Processing algorithm

This clause sets out the processing algorithm, by which the bids in the primary stage are processed.

At the end of each clock round, the auction system's processing algorithm processes the bids made during the round by all bidders for all products.

The algorithm processes the increase bids and decrease bids in a round according to the following steps:

1. All increase bids and decrease bids made by bidders for lots of each product in each round are collected. Maintain bids are not collected (they are applied in full at the posted price for the clock round).
2. The price point for each increase bid and decrease bid is calculated. The price point for a bid is the quotient of:
 - (a) the difference between the bid price and the opening price; and
 - (b) the difference between the clock price and the opening price.
3. A queue of increase bids and decrease bids is formed, sorted by price point, in ascending order. That is, the increase bids and decrease bids are ranked, starting with those bids with the lowest percentage increase on the opening price.
4. If there are bids with tied price points, a pseudorandom process is used to break the tie.

5. The bids in the queue are processed as follows:
 - (a) The first bid in the queue is either rejected, applied in full, or applied in part. These terms are explained below.
 - (b) If the first bid is applied in full, the bid is deleted from the queue, and the process returns to 5(a) (i.e., the new 'first bid' in the queue is either rejected, applied in full or applied in part).
 - (c) If the first bid is applied in part, the part of the bid that is applied is 'removed' from the bid queue and the remainder is left in first place in the queue. The process returns to 5(a) (i.e., the new 'first bid' in the queue, which is the remainder of the previous first bid that was applied in part, is either rejected, applied in full or applied in part).
 - (d) If the first bid is rejected, the bid is left in the first place in the queue. The second bid is then either rejected, applied in full or applied in part. If the second bid is applied in full, the process returns to 5(a). If the second bid is applied in part, it is treated in the same manner as set out in 5(c), and the process returns to 5(a) and to the first bid in the queue. If the second bid is rejected, the bid is left in the second place in the queue, and the process moves on to the third bid in the queue, for it to be rejected, applied in full or applied in part in the same manner.
6. The process described above continues until either of the following occurs:
 - (a) the last bid in the queue is rejected; or
 - (b) all bids have been removed from the queue.
7. Once the process described above has stopped, the following matters are calculated:
 - (a) the posted price for the lots of each product for the clock round; and
 - (b) the posted demand for each bidder for the lots of each product for the clock round.

The calculation for the posted price is set out below. The calculations for the posted demand for each bidder are set out under clauses 2B, 2C and 2D.
8. The eligibility points of each bidder for the next clock round are then calculated. These calculations are set out below in clauses 12 and 13.

For lots of a product, the posted price for the clock round is calculated as follows:

- (a) if, after all bids are processed, the sum of all bidders' posted demands for lots of the product is greater than the number of lots of the product available at the auction, the posted price for the lots of the product is the clock price for the round;
- (b) in any other case, either:
 - (i) if at least one decrease bid for lots of the product was applied in full or in part during the round, the posted price for the lots of the product is the highest bid price at which a decrease bid was applied for the clock round; or
 - (ii) if no decrease bid for lots of the product was applied in full or in part during the round, the posted price for the lots of the product is the opening price for the round.

Clause 2B Applying an increase bid

This clause describes whether, and how, an increase bid is applied in full, applied in part, or rejected, and how to calculate the posted demand for lots of a product for a bidder who made an increase bid in a clock round.

Available activity

The test for determining whether an increase bid by a bidder is applied in full, applied in part or rejected, is whether the bidder has sufficient available activity. The available activity for a bidder, immediately before processing the increase bid, is a measure of whether the bidder has ‘spent’ its eligibility points as a result of the bids made on lots of the products that the bidder has had processed to that point for the clock round. The available activity is calculated as follows:

Available activity immediately before the increase bid is processed is equal to:

- (a) the bidder’s eligibility points at the start of the round; minus
- (b) the sum of the lot ratings of the bidder’s start demands for each product at the start of the round; plus
- (c) the sum of the lot ratings of the number of lots for each product included in any decrease bids for the clock round already applied (in part or fully) during the round, before processing the increase bid in question; minus
- (d) the sum of the lot ratings of the number of lots for each product included in any increase bids for the clock round already applied (in part or fully) during the round, before processing the increase bid in question.

Because bidders are potentially bidding on different products, the bidder’s increase bids and decrease bids may fall in different places in the queue. The calculation of available activity takes into account any increase bids and decrease bids that have already been applied before the increase bid in question is processed.

Increase bid applied in full

An increase bid is a request to increase the number of lots of a product to be allocated to the bidder at the bid price. If the available activity is equal to or greater than the sum of the lot ratings for the number of lots in the increase bid, the increase bid is applied in full. If the increase bid is applied in full, subject to the allocation limits and the MSR, the bidder’s provisional posted demand for the product is equal to:

- (a) the number of lots of the bidder’s start demand for that product; plus
- (b) if the increase bid was the remainder of an increase bid that had been previously applied in part – the number of lots of the parts of the increase bid of that product already applied in part; plus
- (c) the number of lots of the current increase bid of that product that is being processed.

Increase bid applied in part

If the available activity is less than the sum of the lot ratings for the number of lots in an increase bid that is being processed, the increase bid is applied in part. Subject to the allocation limits and the MSR, the bidder’s provisional posted demand for the product is equal to:

- (a) the number of lots of the bidder’s start demand for that product; plus
- (b) if the increase bid was the remainder of an increase bid that had been previously applied in part – the number of lots of the parts of the increase bid of that product already applied in part; plus

- (c) the number of lots that is equal to the quotient of the available activity and the lot rating for the product, rounded down to the nearest integer.

In the case of an increase bid that has been applied in part, the remainder of the increase bid will still be processed by the processing algorithm. The remainder is the difference between the number of lots in the increase bid and the number of lots calculated in paragraph (c) immediately above.

Increase bid applied in part – adjustment for allocation limits

Subclauses (4) and (5) provide that if:

- a bidder is not a set-aside participant; and
- applying an increase bid in full or in part would result in the provisional posted demand for the lots of a product of a bidder exceeding the bidder's allocation limits,

the provisional posted demand is reduced to the extent that the provisional posted demand does not exceed the bidder's allocation limits. Subclause (4) refers specifically to products for the major population area and subclause (5) refers specifically to products for the regional area.

Subclauses (6) and (7) provide that if:

- a bidder is a set-aside participant; and
- the sum of:
 - the provisional posted demand calculated under subclause (2) or (3); and
 - 1 set-aside lot;would exceed the allocation limits;

then the provisional posted demand is reduced to the extent that the provisional posted demand does not exceed the bidder's allocation limits. Subclause (6) refers specifically to products for the major population area and subclause (7) refers specifically to products for the regional area.

If an increase bid was applied in full but the provisional posted demand is reduced to ensure compliance with the allocation limits, then the increase bid is applied in part.

Increase bid rejected

If the quotient of the available activity and the lot rating for the product is less than one, the increase bid is rejected.

If a bidder has selected the MSR for the product and the increase bid would have resulted in a provisional posted demand of less than the MSR, the increase bid is rejected and the bidder's provisional posted demand for that product is zero.

If the provisional posted demand of a bidder is reduced to zero to ensure compliance with the allocation limits under subclauses (4), (5), (6) or (7), the increase bid is rejected.

Calculating posted demand and eligibility points

After all increase bids and decrease bids for a clock round have been processed, the bidder's posted demand for lots of a product for the clock round is equal to the provisional posted demand that applies after the last bid in the queue is processed.

Clause 2C Applying a decrease bid

This clause describes whether, and how, a decrease bid is applied in full, applied in part, or rejected, and how to calculate the posted demand for lots of a product for a bidder who made a decrease bid in a clock round.

Provisional excess demand

The main test for determining whether a decrease bid is applied in full, applied in part or rejected, is whether the bidder has sufficient provisional excess demand for lots of the product. The bidder's provisional excess demand for lots of a product immediately before processing the decrease bid is a measure of whether applying the decrease bid would result in aggregate demand falling below the available supply. The bidder's provisional excess demand for the product is equal to:

- (a) the excess demand for lots of the product at the start of the clock round; plus
- (b) the difference between:
 - (i) the number of lots for the increase bids of the product that have already been applied in full or in part for the clock round, immediately before the decrease bid is processed; and
 - (ii) the number of lots for the decrease bids of the product that have already been applied in full or in part, immediately before the decrease bid is processed; minus
- (c) the number of lots of the decrease bid.

Decrease bid applied in full

A decrease bid is a request to decrease the number of lots of a product to be allocated to the bidder at the bid price. If the provisional excess demand immediately before the bid is processed is equal to or greater than zero, the decrease bid is applied in full. The bidder's provisional posted demand for the product is equal to:

- (a) the number of lots of the bidder's start demand for that product; minus
- (b) if the decrease bid was the remainder of a decrease bid that had been previously applied in part – the number of lots of the parts of the decrease bid of that product already applied in part; minus
- (c) the number of lots of the current decrease bid of that product, to be processed.

If a bidder has selected the MSR for the product and a decrease bid would be applied in part such that the provisional posted demand is 1 lot, then the decrease bid is applied in full and the provisional posted demand is zero. This ensures the bidder is not allocated 1 lot when they have selected a MSR of 2 lots.

Decrease bid applied in part

A decrease bid is applied in part if:

- (a) the provisional excess demand immediately before the decrease bid is processed is less than zero (that is, if applying the bid in full would mean that the aggregate demand for lots of the product would be less than supply); and

- (b) the absolute value of the provisional excess demand is less than the number of lots of that product in the current decrease bid (that is, if before the bid is processed, aggregate demand for lots of the product is greater than the supply).

If the decrease bid is applied in part, the bidder's provisional posted demand for the product is equal to:

- (c) the number of lots of the bidder's start demand for that product; minus
- (d) if the decrease bid was the remainder of a decrease bid that had been previously applied in part – the number of lots of any part of the decrease bid of that product already applied in part; minus
- (e) the difference between the number of lots in the decrease bid and the absolute value of the provisional excess demand.

In the case of a decrease bid that has been applied in part, the remainder of the decrease bid will still be processed by the processing algorithm. The remainder is the difference between the number of lots in the decrease bid of that product and the provisional posted demand calculated in paragraph (e) immediately above.

Decrease bid rejected

A decrease bid is rejected if:

- (a) the provisional excess demand immediately before the decrease bid is processed is less than zero (that is, if applying the bid in full would mean that the aggregate demand for lots of the product would be less than the supply); and
- (b) the absolute value of the provisional excess demand is greater than or equal to the number of lots in the current decrease bid of that product (that is, if before the bid is processed, aggregate demand for lots of the product is equal to or less than the supply).

If a decrease bid is rejected, the bidder's provisional posted demand for the product is equal to:

- (a) the number of lots of the bidder's start demand for that product; minus
- (b) if the decrease bid was the remainder of a decrease bid that had been previously applied in part – the number of lots of any parts of the decrease bid of that product already applied in part.

Calculating posted demand and eligibility points

After all increase bids and decrease bids for a clock round have been processed, the bidder's posted demand for lots of a product for the clock round is equal to the provisional posted demand that applies after the last bid in the queue is processed.

Clause 2D Applying a maintain bid

A maintain bid is a bid to maintain the bidder's start demand for lots of a product at the end of the clock round. It is always applied in full, such that, for the clock round in which the maintain bid is made, the bidder's posted demand for lots of the product is equal to the bidder's start demand for lots of that product for the clock round.

Part 3—Arrangements for primary stage

Clause 3 Entries in the auction system before the first clock round – pre-bidding phase

This clause describes the operation of the pre-bidding phase in the primary stage. It enables bidders to make binding decisions about their bidding strategy closer to the auction commencement, rather than by the eligibility deadline (or extended eligibility deadline, if there is one).

Start demands

Before the pre-bidding phase, the auction manager must enter the following information into the auction system for each bidder for each product, as recorded in the register of bidders:

- provisional start demands;
- provisional MSRs;
- allocation limits applicable to the major population and regional products.

If a set-aside participant is not entitled to bid during the primary stage and the secondary stage, its provisional start demand for each product is zero, its provisional MSR for each product is zero and it must not participate in the pre-bidding phase.

During the pre-bidding phase, bidders may confirm or change their provisional start demands and provisional MSRs. For the 900 lower major population and 900 lower regional products, no MSR can be set because there is only 1 lot of available supply. A set-aside participant may not set the MSR for the 900 upper major population and 900 upper regional products, because it is already guaranteed a minimum of 1 set-aside lot. At the conclusion of the pre-bidding phase, the provisional start demand entries become actual start demands which apply in the first clock round.

If a bidder does not participate in the pre-bidding phase, its start demands and MSRs are taken to be its provisional start demands and provisional MSRs, as recorded in the register of bidders (and now entered into the auction system).

Start demand validity rules – pre-bidding phase

The same start demand validity rules apply to the pre-bidding phase as to the provisional start demands in section 33—they must not exceed the allocation limits or the supply for any product.

A bidder may only change a provisional start demand in the pre-bidding phase such that its initial eligibility points do not exceed the maximum eligibility points calculated in its eligibility nomination form. This is because the maximum eligibility points are secured by an eligibility payment or deed of financial security, or a combination of both. Therefore, a bidder can only maintain or reduce its eligibility points in the pre-bidding phase. Its initial eligibility points in the first clock round of the primary stage cannot be greater than the maximum eligibility points it has secured.

After the end of the pre-bidding phase

After the pre-bidding phase concludes, the auction manager must provide each bidder with its start demands, MSRs and initial eligibility points.

Interpretation

In this clause, initial eligibility points means the total value of the lots of each product for the actual start demands of the bidder as recorded in the auction system at the end of the pre-bidding phase.

Clause 4 Setting bid increment percentage and eligibility requirement percentage

Bid increment percentage

Before the first clock round, the auction manager must set a percentage (**bid increment percentage**) for each product to be applied in calculating the clock price for the product in a clock round. The auction manager must notify the bid increment percentage to each bidder. The bid increment percentage may be different for different products and may be different for the same product between different clock rounds.

Eligibility requirement percentage

Before the first clock round, the auction manager must set a percentage (**eligibility requirement percentage**) to be applied in calculating the activity target during each clock round. The auction manager must notify the eligibility requirement percentage to each bidder. The eligibility requirement percentage may be different for different clock rounds.

Clause 5 Schedule for clock rounds

This clause sets out the requirements the auction manager must meet in scheduling the clock rounds of the primary stage. The auction manager may, at any time, modify the schedule of clock rounds. If this occurs, the auction manager must tell each bidder for the next clock round of the change as soon as practicable.

Clause 6 Recess days

The auction manager may declare a day to be a *recess day* (whether or not the day is a working day) on which there will be no clock rounds. Before declaring a recess day, the auction manager must give bidders an opportunity to comment on the proposed declaration and take into account any comments received. If the auction manager decides to declare a day to be a recess day, the auction manager must inform each bidder accordingly.

Clause 7 Clock rounds

Each lot of a product is available for bidding in the first clock round, and in each subsequent clock round until the final clock round for bids on lots of the products available. Bidding cannot close on a single product; bidding remains open on all products until the final clock round.

Each bidder may make a bid on lots of a product available for bidding during a clock round.

Clause 8 Information available for clock rounds of the primary stage

Before the start time of each clock round, the auction manager must provide the following information to each bidder for that clock round, using the auction system:

- the start time and end time of the clock round;
- the opening price and clock price that will apply to lots of each product in the clock round;
- the excess demand for that product;
- the eligibility points of the bidder for the clock round;
- the bid increment percentage and eligibility requirement percentage for the clock round;
- any other information the auction manager considers necessary or convenient to conduct the primary stage of the auction.

After the end time of each clock round, the auction manager must provide the following information to each bidder for that clock round, using the auction system:

- the posted prices for each product in the clock round;
- the posted demands of the bidder for each product in the clock round;
- any other information the auction manager considers necessary or convenient to conduct the primary stage of the auction.

Clause 9 Changing bid increment percentage

This clause provides that the auction manager may, at any time during the primary stage, change the bid increment percentage for a product.

Before doing this, the auction manager must tell each bidder of the proposed change, ask each bidder to provide comments on the proposal within the time (being not less than 1 hour) set by the auction manager, and take into account any comments on the proposal that are received within that time.

The auction manager must notify each bidder before the change takes effect.

Clause 10 Changing eligibility requirement percentage

The auction manager may, at any time during the primary stage, change the eligibility requirement percentage to be applied in calculating the activity target during a clock round.

Before doing this, the auction manager must tell each bidder of the proposed change, ask each bidder to provide comments on the proposal within the time (being not less than 1 hour) set by the auction manager, and take into account any comments on the proposal that are received within that time.

The auction manager must notify each bidder before the change takes effect.

Part 4—Bidding in the primary stage

Clause 11 Definitions

This clause defines terms used in Part 4.

Clause 12 Eligibility points

Subclause (1) sets out a bidder's eligibility points during the primary stage. In the first clock round, the bidder's initial eligibility points will be those recorded in the auction system at the end of the pre-bidding phase. In subsequent rounds, the bidder's eligibility points will be the lesser of the bidder's eligibility points in the previous clock round and the bidder's eligibility points calculated in accordance with subclause 13(2).

Subclause (2) sets out a limit on a bidder's bidding activity, based on the bidder's eligibility points. If, in a clock round:

- (a) the total value of the lots of each product, in eligibility points, for the start demands of the bidder for the round; plus
- (b) the total value of the lots of each product, in eligibility points, for all the increase bids of the bidder for the round; minus
- (c) the total value of the lots of each product, in eligibility points, for all the decrease bids of the bidder for the round;

is greater than the bidder's eligibility points at the time of the bid or bids, then the bidder is not entitled to make that bid or those bids.

Clause 13 Reduction in eligibility points

This clause sets out how a bidder's eligibility points for the next clock round is calculated if they do not meet the activity target for the current clock round, and how that impacts its bidding in future clock rounds.

A bidder's eligibility points for the next clock round will be reduced if the bidder does not meet its activity target in the current clock round.

Subclause (2) sets out how to calculate a bidder's eligibility points for the next clock round, based on the higher figure of the eligibility points for their placed bids or processed bids in the current clock round, divided by the eligibility requirement percentage.

In future clock rounds, bidders may only bid in such a way that they do not exceed their eligibility points for that clock round.

Clause 14 Clock round bids

This clause describes general rules for primary stage bidding.

A bidder is entitled to bid in a clock round if the bidder's eligibility points are greater than zero.

If a set-aside participant is not entitled to bid during the primary stage and the secondary stage, it may not bid in any clock round.

A bidder may not make more than one bid for each product in each clock round.

Except where the auction manager permits bids under subsections 64(1) or 64(2), a bidder's bid is taken to have been made in a clock round when the bid has passed data validation checks that are performed by the auction system.

A bidder may change, delete or replace a bid in the auction system during a clock round as often as desired, subject to the data validation checks that are performed by the auction system. The bid for the lots of a product that will be treated as binding for a bidder is the bid in the auction system at the end time of the clock round.

Clause 15 Validity of bids

This clause outlines specific rules in relation to bid validity during the primary stage.

For all bids, a bid in a clock round will only be valid if, except where the auction manager takes steps under subsection 64(2), the bid is received by the auction system between the start time and the end time of the clock round.

For increase bids for lots of a product in a clock round, the bid will only be valid if all the following conditions apply:

- the bid price is:
 - greater than or equal to the opening price; and
 - less than or equal to the clock price.
- the bid price is a multiple of 1,000;
- the bid, if applied in full, would not exceed the bidder's allocation limits;
- the bid, if applied in full, would not result in the bidder's posted demand for lots of the product being greater than the supply;
- if the bidder selected a MSR and its start demand is zero, the bid is for at least 2 lots;
- the bid would not result in the bidder exceeding its eligibility points.

For decrease bids for lots of a product in a clock round, the bid will only be valid if all the following conditions apply:

- the bid price is:
 - greater than or equal to the opening price; and
 - less than or equal to the clock price.
- the bid price is a multiple of 1,000;
- the difference between:
 - the bidder's start demand; and
 - the number of lots for the bidder's decrease bid;is not less than zero;
- if the bidder selected a MSR, the difference between:
 - its start demand; and
 - the number of lots for the bidder's decrease bid;is either zero or at least 2 lots;
- the bid would not result in the bidder exceeding its eligibility points.

Subclause (2) provides that if a bidder does not make a bid, or does not make a valid bid, during a clock round, then the bidder is taken to have requested a decrease bid for the number of lots equal to the bidder's start demand in that clock round, at the opening price for that clock round. This decrease bid is processed in accordance with clauses 2A and 2C and may be applied in full, applied in part, or rejected. If the decrease bid were applied in full, it would have the effect of reducing the bidder's posted demand for that clock round to zero. Such a bid will also have consequences for the bidder's eligibility points for the next clock round. The purpose of this provision is to ensure a bidder's financial commitment does not increase without its explicit authorisation. This may occur if a bidder who does not make a valid bid during a clock round was taken to have requested a maintain bid for the number of lots equal to their posted demand from the previous clock round.

Part 5—Determining the primary winners and primary prices

Clause 16 End of clock rounds

The clock rounds of the primary stage will end when there is a clock round in which, for every product, the excess demand is not greater than zero for the lots of the product. This will be the final clock round.

Clause 17 Determination of primary winners and primary prices

This clause sets out how to determine the primary winners and the primary price to be paid by each primary winner. The primary price is a component of the spectrum access charge imposed in relation to the spectrum licence to be issued to winning bidders. As such, this clause relates to Division 2 of Part 6 of the determination, which fixes the spectrum access charges for issuing spectrum licences, for the purpose of section 294 of the Act. This clause is therefore disallowable under section 42 of the LA.

If a bidder has a posted demand for one or more lots of a product as a result of the final clock round, that bidder is a primary winner in relation to those lots (**allocated lots**).

For each product, the total posted price for the primary winner is the figure obtained by multiplying the posted demand for the product by the posted price for the product for the final clock round.

The primary price is the sum of the total posted prices for each product for which the primary winner has been allocated lots.

Part 6—Bringing the primary stage to an end

Clause 18 Results of the primary stage

After the primary winners and primary prices are determined, the auction manager must tell each primary winner, in writing, the total number of lots of each product allocated to the primary winner, the total posted price for the allocated lots of each product, and the primary price to be paid by the primary winner.

After the primary winners and primary prices are determined, the auction manager must tell all bidders, in writing, the total number of primary winners and the total number of lots of each product that have been allocated to primary winners.

Clause 19 End of the primary stage

Immediately after the auction manager provides the results in accordance with clause 18, the auction manager must tell each bidder, in writing, that the primary stage is completed.

SCHEDULE 3

Rules for the secondary stage of the auction

The secondary stage is required to auction single lots of a product (**residual lots**) that remain unallocated after the primary stage. That is, a lot will only be offered in the secondary stage if it is the only unallocated lot in that product. This includes any unallocated lot of the 900 lower major population product and 900 lower regional product. If no residual lots remain unallocated from the primary stage or there are no bidders eligible to bid on the residual lots, the secondary stage is not required. If there are multiple residual lots to be allocated, they will be allocated simultaneously.

The secondary stage uses an SCA format. The starting prices in the secondary stage are the same as in the primary stage. The allocation limits continue to apply in the secondary stage. To minimise strategic bidding, if a bidder has selected an MSR for a product and does not obtain at least that number of lots for that product during the primary stage, they will not be permitted to bid on the residual lot of that product in the secondary stage. For example, if a bidder selects an MSR of 2 lots for the 850 regional product and obtains zero lots in the primary stage, then it is ineligible to bid on a 850 regional residual lot in the secondary stage since, if successful, it would obtain 1 lot, which is below its MSR. This is to deter bidders from reducing demand during the primary stage in order to attempt to obtain an amount of spectrum less than its MSR at a lower price in the secondary stage.

Eligibility points are not applicable to the secondary stage since there is no activity rule or ability to switch demand between products.

Part 1—Application and interpretation

Clause 1 Application of Schedule

This Schedule applies to residual lots of each product in the 850/900 MHz band.

Clause 2 Bidders to choose between products

This section addresses the special case where a bidder wins an amount of spectrum less than its allocation limit in the primary stage (including set-aside lots allocated to set-aside participants) but if it won all the available residual lots in the secondary stage, then it would exceed its allocation limits. Before the secondary stage starts, the auction manager will set a deadline for the bidder to nominate which products it wishes to bid on.

For example, say a bidder has an effective allocation limit of 32 MHz in major population areas in the auction, since the allocation limit for the major population area is 82 MHz and assuming the bidder holds 50 MHz of spectrum under spectrum licences in other sub-1 GHz bands. It wins 20 MHz of spectrum in the primary stage by winning both lots of the 850 major population product. Thus, it could win a further 12 MHz of spectrum in the major population area in the secondary stage without exceeding its allocation limits. In the secondary stage, residual lots of the 900 lower major population product and 900 upper major population product are available. Since the size of each lot is 10 MHz, the bidder can only bid on one of the available residual lots but not both. Before the deadline set by the auction manager, the bidder must nominate which product it will bid on.

Subclause (1) addresses the case where a bidder can win 1 lot out of 2 or 3 residual lots available in the secondary stage without exceeding its allocation limits in the major population area.

Subclause (2) addresses the case where a bidder can win 2 lots out of 3 residual lots available in the secondary stage without exceeding its allocation limits in the major population area.

Subclause (3) addresses the case where a bidder can win 1 lot out of 2 or 3 residual lots available in the secondary stage without exceeding its allocation limits in the regional area.

Subclause (4) addresses the case where a bidder can win 2 lots out of 3 residual lots available in the secondary stage without exceeding its allocation limits in the regional area.

If the bidder does not make a nomination before the deadline, it may not bid for any of the residual lots available in the relevant geographic area in the secondary stage.

The same nomination deadline must apply to all bidders to which this section applies.

Clause 3 Interpretation

This clause defines a number of key terms used throughout Schedule 3. It also outlines which lots are subject to the MSR test and the requirements to meet that test. A lot meets the MSR test for a bidder if it has not set the MSR for that product, or it is of the 900 lower major population or 900 lower regional product, or the bidder has won at least 2 lots in the primary stage. As a set-aside participant may not set the MSR for the 900 upper major population or 900 upper regional products, the MSR test is met for any residual lots of those products.

Part 2—Arrangements for secondary stage

Clause 4 Schedule for rounds of the secondary stage and setting bid increment percentage

This clause provides for scheduling rounds of the secondary stage and setting the bid increment percentage.

There must be at least 24 hours between the final clock round of the primary stage and the first round of the secondary stage. Rounds must only occur on a working day (as defined in subsection 4(1) of the determination) and will start and finish between 9 am and 5 pm, other than on a recess day. The scheduling of the rounds between those times is at the auction manager's discretion. There is no minimum or maximum duration for each round, nor for the interval between rounds. There is no upper or lower limit on the number of rounds that can be held on any day.

All bidders will be notified via the auction system of the anticipated schedule of rounds for a given day, a minimum of one hour before the first round of the day. This clause also allows the auction manager to alter the schedule of rounds. However, if this occurs, the auction manager must inform bidders of the change as soon as practicable.

Before the first round of the secondary stage, the auction manager must set the bid increment percentage for each residual lot as a percentage of the starting price for the lot in the first round of the secondary stage, and of the specified price for the lot in any other round of the secondary stage. This bid increment percentage affects the minimum bid that can be made by a bidder for a lot in a round, if the bidder wishes to make bids in later rounds. The auction manager must notify the bid increment percentage to all bidders before the first round of the secondary stage. The bid increment percentage may vary between lots and may vary between rounds.

Clause 5 Rounds of the secondary stage

Each residual lot is available for bidding in the first round of the secondary stage, and in each subsequent round of the secondary stage until the final round for bids on that lot.

During a round of the secondary stage, each bidder for the round may make a bid on each lot that is available for bidding during that round and that meets the MSR test for the bidder. All lots available for bidding will be on offer simultaneously.

A bidder cannot participate in bidding for a residual lot of a product if allocation of that lot to the bidder would exceed the bidder's allocation limits. Eligibility points are not required to bid in the secondary stage.

Clause 6 Information available during the secondary stage

Before each round starts, the auction manager must use the auction system to inform each bidder of the start time and end time of the round. For each residual lot available for bidding in that round that meets the MSR test for the bidder and on which the bidder may make a bid, the auction manager will provide the following information:

- the specified price that will apply to the lot in the round;
- the starting price for the lot for the first round of the secondary stage;

- for each round other than the first round of the secondary stage – the specified price that applied to that lot in the previous round of the secondary stage;
- the total number of bidders for whom the lot meets the minimum spectrum requirement test and for whom the allocation of the lot as a unit of product would not exceed the bidder's allocation limits.

The auction manager may also provide any other information they consider necessary or convenient to conduct the secondary stage.

After each round of the secondary stage, the auction manager must provide the following information to each bidder for that round, using the auction system:

- the bids made by the bidder during the round (if any);
- if, as a result of the round, the bidder is the secondary winner for a lot – the secondary price for that lot;
- for each lot available for bidding by that bidder in that round that meets the minimum spectrum requirement test for the bidder and on which the bidder may make a bid – the number of bidders remaining in the secondary stage of the auction for that lot after the end of the round; and
- any other information the auction manager considers necessary or convenient to conduct the secondary stage of the auction.

The auction manager is not prevented from providing the above information to other bidders at any time during the secondary stage.

Clause 7 Recess days

This clause provides that the auction manager may declare a day to be a *recess day* (whether or not the day is a working day). Before the auction manager declares a recess day, the auction manager must give bidders an opportunity to comment on the proposed declaration and take into account any comments received. If the auction manager declares a recess day the auction manager must inform all bidders of that decision.

Part 3–Bidding in the secondary stage

Clause 8 When a bidder cannot make a bid on a lot

In the SCA format, bidders can make a continue bid or an exit bid. A continue bid in a round is a bid equal to or greater than the specified price for the lot for the round. An exit bid in a round is a bid equal to or greater than the specified price for the lot for the previous round (or starting price for the lot in the first round), but less than the specified price for the lot in that round.

If, in a round of the secondary stage a bidder does not make a bid on a lot, or a bidder is an exit bidder in relation to a lot, the bidder cannot make a bid on that lot in any subsequent round of the secondary stage.

If another section of the determination provides that a set-aside participant is not entitled to bid during the primary stage and the secondary stage, that set-aside participant cannot make a bid on any residual lot in any round of the secondary stage.

Clause 9 Starting price and specified price

This clause provides that a bid below the starting price on a lot will not be accepted. The starting prices for residual lots are the same as for lots in the primary stage.

This clause also explains how the specified price for each lot is to be calculated in a round of the secondary stage of the auction. The specified price for a lot in the first round is the sum of the starting price for the lot and the bid increment percentage for the lot multiplied by that starting price, rounded up to the next thousand. The specified price for a lot in any other round of the secondary stage is the sum of the specified price for the lot in the previous round of the secondary stage and the bid increment percentage for that lot multiplied by that specified price, rounded up to the next thousand.

If a round is the final round for bids on a lot, there is no specified price for the lot in any later round of the auction.

Clause 10 Changing bid increment percentage

This clause provides that the auction manager may, at any time during the secondary stage, change the bid increment percentage used to calculate the specified price on a lot in future rounds. Adjusting the level of these bid increment percentages may be used to influence the speed at which the auction progresses.

Before making any change, the auction manager must tell bidders of the proposed change, ask bidders for their comments on the proposal within the time (being not less than one hour) set by the auction manager, and take into account any comments received on the proposal. The auction manager must notify all bidders of the change before the round when the change takes effect.

Clause 11 General rules about bidding

A bidder may only make a bid on a lot if the lot meets the MSR test for the bidder and may only make a bid that is valid in accordance with clause 13 and must not make a bid on a lot if subclause 2(6) or 2(7), or clause 8 or 14 provides that the bidder cannot make a bid on the lot.

A bid is taken to have been made when the bidder's bid for a round of the auction has passed data validation checks that are performed by the auction system, subject to subsections 64(1) and 64(2) (which allow the auction manager to accept bids by a method other than the auction system and accept bids after the round has closed, in certain circumstances).

A bidder may change, delete or replace a bid in the auction system as often as desired during a round in the secondary stage, subject to the data validation checks that are performed by the auction system. The bid that will be treated as binding for a bidder is the bid in the auction system at the end time of a round.

Clause 12 Continue bid made at or greater than specified price

As mentioned above, bidders are allowed to bid above the specified price for the lot in a round in the secondary stage. A bidder may make a continue bid on a lot in a round of the auction (**the relevant round**) that is for an amount (**the advance price**) that is equal to or greater than the specified price for the lot in the relevant round. This continue bid will constitute, in any round after the relevant round where the advance price is greater than or equal to the specified price for the lot in that round, a continue bid made on that lot in that round. This bid will also, in the first round after the relevant round in which the advance price is less than the specified price for the lot in that round, constitute an exit bid made on that lot in that round.

For example, consider a lot with a starting price of \$100,000, and a bid increment percentage of 10%. In the round N, a bidder makes a bid of \$130,000 (**advance price continue bid**).

<i>Round</i>	<i>Specified price for the previous round, or starting price for the first round</i>	<i>Specified price for the round</i>	<i>An advance price continue bid in the first round of \$130,000 is taken to be...</i>
N	\$100,000	\$110,000	A continue bid, being greater than \$110,000
N+1	\$110,000	\$121,000	A continue bid, being greater than \$121,000
N+2	\$121,000	\$134,000	An exit bid, being greater than \$121,000 but less than \$134,000.

However, a bidder may, in any subsequent round after making the advance price continue bid, make a contrary bid that takes the place of the bid deemed to be made.

Clause 13 Validity of bids

This clause prescribes the requirements for a bid in the secondary stage to be valid.

A bid in a round of the secondary stage is valid if all of the criteria listed apply to the bid. These criteria include:

- the bid is received between the start time and end time of the round;
- the bid must be greater than the starting price (first round) or specified price (subsequent rounds) for the lot;
- the bid is a multiple of 1,000;
- the bid would not cause the bidder to exceed its allocation limits;
- the bid is not prohibited by the bidder's nomination under clause 2.

Clause 14 Exit bids – exclusion from further participation

If, in a round of the secondary stage, a bidder (**the exit bidder**) makes an exit bid on a lot and 2 or more bidders make a continue bid for the lot, the exit bidder cannot make any bid on the lot in any subsequent round of the secondary stage.

Part 4–Determining the secondary winners and secondary prices

Clause 15 Final round for bids on a lot, final round of the secondary stage, secondary winners and final high bid

This clause sets out the rules for determining when bidding on a lot ends, the identity of the winning bidder and the final high bid.

The final round for bids on a lot is the first round where:

- there is only one bid made for the lot; or
- one or more exit bids, and no more than one continue bid, are made for the lot; or
- no bids are made for the lot.

If 2 or more continue bids are made for the lot during a round, there will be at least one further round for that lot.

The secondary stage ends when, for each lot of a product in the stage, the final round for bids on a lot has occurred (**the final round of the secondary stage**).

The final high bid is the bid that wins the lot. The final high bid for a lot in the secondary stage is whichever of the following applies:

- if one bid was made on the lot in the final round for the lot – that bid is the final high bid;
- if one continue bid was made on the lot in the final round for the lot (regardless of how many exit bids were made in that round) – that continue bid is the final high bid;
- if all of the following apply:
 - no continue bid was made on the lot in the final round for bids on the lot; and
 - 2 or more exit bids were made on the lot in the final round for the lot; and
 - one of those exit bids (**the high exit bid**) was greater than each of the other exit bids; the high exit bid;
- the bid selected through the tiebreaker process set out in clause 16.

That is, generally speaking, the highest bid made on the lot will be the final high bid for the lot. However, in the circumstance where no continue bid is made on the lot in the final round and there are 2 or more exit bids that are equal and higher than any other exit bid, the final high bid for the lot is worked out in accordance with clause 16.

Subject to subclause 16(2), the bidder who made the final high bid for a lot is the secondary winner for that lot. However, if there is no bid by any bidder in the first round for a lot, bidders are not considered to have entered an exit bid at the starting price (so no bid is taken to have been made under the definition of a bid in subclause 3(1)), and accordingly there will be no final high bid in that case (and, therefore, there is no winning bidder for that lot).

Clause 16 Tiebreaker for a lot

This clause applies in relation to a lot if, during the final round for bids on a lot, no continue bid was made on the lot, and 2 or more exit bids were made on the lot, and of those exit bids:

- 2 or more of those exit bids were equal (the tied exit bids); and
- the tied exit bids were greater than each other exit bid made in the final round.

Where this clause applies, the secondary winner for the lot will be selected from the bidders who made the tied exit bids by pseudorandom selection which must be conducted before the next round of the secondary stage (if any).

For the purposes of paragraph 15(3)(d), the final high bid on the lot is the amount of the last bid made by the secondary winner. This will be the amount of the tied exit bids.

Part 5—Bringing the secondary stage to an end

Clause 17 End of rounds of the secondary stage

The rounds of the secondary stage will end immediately after either:

- if:
 - clause 16 applies in relation to a lot; and
 - for each other lot either:
 - there is a secondary winner for the lot; or
 - there were no bids on the lot in the first round of the secondary stage;the pseudorandom selection mentioned in subclause 16(2) occurs; or
- in any other case – the final round of the secondary stage.

Clause 18 Determination of secondary prices

Each secondary winner for a lot is allocated that lot.

The residual price for an allocated lot of a product in the secondary stage is an amount equal to:

- if there is only one bid on the lot – the starting price for the lot; or
- if there is more than one bid on the lot – the highest bid made for the lot by any bidder, during any round of the secondary stage, other than the final high bid.

The secondary price to be paid by a secondary winner for all the allocated lots of each product of the secondary winner is the sum of all the secondary winner's residual prices.

The secondary price is a component of the spectrum access charge imposed in relation to the spectrum licence to be issued to winning bidders. As such, this clause relates to Division 2 of Part 6 of the determination, which fixes the spectrum access charges for issuing spectrum licences, for the purpose of section 294 of the Act. This clause is therefore disallowable under section 42 of the LA.

Clause 19 Results of the secondary stage

After the secondary winners and secondary prices are determined, the auction manager must tell each secondary winner, using the auction system, the lots of each product allocated to the secondary winner, the residual price for the allocated lot of each product and the secondary price to be paid by the secondary winner for all allocated lots.

After the secondary winners and secondary prices are determined, the auction manager must tell all bidders (in the primary stage and secondary stage) the total number of secondary winners and the product to which the lot belongs, for each lot allocated to a secondary winner.

Clause 20 End of the secondary stage

The auction manager must tell each primary winner and each secondary winner, the sum of:

- the primary price ;
- the secondary price;
- for a set-aside participant, the set-aside price for its set-aside lots;

for all the allocated lots allocated to them in the primary stage or secondary stage, or by electing to take up its set-aside lots.

Immediately after the auction manager provides the results in accordance with clause 19, the auction manager must tell each bidder that the secondary stage is completed and the auction will progress to the assignment stage.

SCHEDULE 4 Rules for the assignment stage of the auction

Part 1–Application and interpretation

Clause 1 Application of Schedule

This clause sets out the purpose of the assignment stage and the lots to which it applies.

The assignment stage assigns specific frequencies to the winners of generic lots allocated in the primary stage and the secondary stage, and to any set-aside lots allocated. It also allocates the downshift metropolitan lot and downshift regional lot.

Clause 2 Interpretation

This clause defines a number of key terms used throughout the Schedule.

Part 2–Arrangements for assignment stage

Clause 3 Schedule for assignment rounds

This clause sets out the scheduling arrangements and how products may be ordered and grouped for assignment rounds.

After the completion of the secondary stage (if any) or primary stage (if there is no secondary stage), the auction manager must announce the anticipated start time and end time of each assignment round, and the product or products that will be the subject of each assignment round.

The first assignment round will begin at least 48 hours after the end of the secondary stage (if any) or primary stage (if there is no secondary stage). Assignment rounds must be held between 9 am and 5 pm on working days.

The auction manager will announce to all bidders the anticipated schedule of assignment rounds after the completion of the secondary stage (if any) or primary stage (if there is no secondary stage). The auction manager has discretion over the scheduling and duration of the assignment rounds, the number of rounds per day, and the products that will be assigned in each round.

Two or more products may be the subject of a given assignment round. A product must not be the subject of more than one assignment round.

The 900 lower major population product and the 900 lower regional product must not be the subject of an assignment round, because the frequency range for the only lot of each product is assigned automatically as outlined in clause 9.

Part 3—Bidding in the assignment stage

Clause 4 Frequency range options in assignment rounds

This clause explains how the set of frequency range options available to bidders for lots won in the primary and secondary stages will be determined. It also specifies who is entitled to bid in the assignment stage and the information about frequency range options that must be provided to bidders.

Generally

Only bidders who have won at least one lot of a product in the primary stage or the secondary stage, are eligible to bid in the assignment round for the product. If the 900 upper major population or 900 upper regional product is the subject of the assignment round, each set-aside participant is also eligible to bid.

For each product, other than the 900 lower major population product and the 900 lower regional product, the auction manager must determine a list of frequency range options available to each bidder. The frequency range included within each option for a bidder is a pair of contiguous frequency ranges corresponding in bandwidth to half of the total size of the lots of the product that the bidder was allocated in the primary stage and the secondary stage, and any set-aside lots allocated for that product. This is because the band is configured as paired FDD spectrum, and thus the winner of a lot in the lower part of the band is automatically assigned the corresponding paired lot in the upper part of the band.

For each option determined by the auction manager, there must also exist at least one frequency range option for every other bidder so that each bidder's frequency range complies with the contiguity requirement for a frequency range and none of the frequency ranges overlap. The options available are also subject to the requirement for contiguity of products in subclause (3).

Contiguity between 900 lower products and 900 upper products allocated to an assignment bidder

Subclause (3) provides that a winning bidder of:

- both the one lot of the 900 lower major population product and at least one lot of the 900 upper major population product; or
- both the one lot of the 900 lower regional product and at least one lot of the 900 upper regional product

is guaranteed frequency contiguity for those lots. For example, if a bidder wins the one lot of the 900 lower regional product and 2 lots of the 900 upper regional product, it is guaranteed a contiguous frequency holding for those 3 lots. That means it will be pre-assigned the frequency range corresponding to the lowest 2 lots of the 900 upper regional product.

A set-aside participant will not be pre-assigned geographic contiguity for its set-aside lot of the 900 upper major population product and its set-aside lot of the 900 upper regional product. If it wishes to achieve the same frequency range for both set-aside lots, it must bid for the same frequency range in the assignment rounds.

Where one assignment round deals with more than one product

If a bidder is participating in a given assignment round for more than one product, the auction manager must determine frequency range options available to the bidder that deal with the products as a group, providing the requirements of subclauses (2) and (3) are met for each individual product in the group. Offering frequency range options to a group of products is intended to enable bidders to obtain common frequency ranges across different geographic areas, if they so desire. This may facilitate the efficient use of spectrum by licensees.

Where assignment round is unnecessary

Subclause (5) provides that if there is only one possible frequency range option for a product, the frequency ranges can be pre-assigned and no assignment round needs to be conducted. The assignment price for all bidders will be zero.

Schedule of assignment rounds

At least 24 hours before the start of the first assignment round, the auction manager must provide each bidder in the assignment stage with the list of frequency range options available to the bidder in each

of the assignment rounds. These options relate to the lots that a bidder won in the primary stage or the secondary stage, and set-aside lots allocated to a set-aside participant.

If the frequency ranges for any product are pre-assigned under subclause (5), the auction manager must inform each assignment round bidder:

- no assignment round needs to be conducted for that product;
- the frequency range option assigned to the bidder;
- that it is taken to have made an assignment bid with a bid price of zero for that frequency range option.

If all products in the assignment stage have only one feasible frequency range option for every winning bidder, then one assignment round will be conducted for all products. Assignment bidders will not make bids during this assignment round, but each assignment bidder will be taken to have made a bid of zero dollars for each of its options. In effect, this round assigns all frequency ranges according to the single feasible option at an assignment price of zero for all assignment bidders.

Clause 5 Assignment bids

This clause describes what an assignment bid consists of, how a bidder may bid, how a bid can be changed during an assignment round and which bids are considered binding.

An assignment bid consists of the frequency range option that is being bid for and a bid price for the frequency range option that is a multiple of one thousand.

An assignment bidder may only submit a bid for a frequency range option in the assignment round that has been provided to them by the auction manager. Bidders can bid on more than one frequency range option within a round, showing their order of preference by the amounts bid. However, bidders are not obliged to place a bid in any assignment round.

An assignment bidder can change, delete or replace an assignment bid during an assignment round as often as desired, subject to the data validation checks that are performed by the auction system. The assignment bid that will be treated as binding for a bidder is the assignment bid in the auction system at the end time of the assignment round.

Subclause (5) provides that where there is no valid bid for a frequency range option, it is taken to have an assignment bid with a bid price of zero dollars. Subclause (6) provides that if a bidder does not submit any assignment bid, the bidder is taken to have bid zero dollars for every frequency range option.

Clause 6 Validity of assignment bids

This clause sets out the conditions for valid bids during the assignment rounds that will be considered in determining winning assignment bids.

To be valid, an assignment bid must be:

- received between the start time and end time of the assignment round for the product or group of products, except where subsection 64(2) applies;
- for a frequency range option made available to the bidder;
- for an amount that is a multiple of one thousand.

Part 4—Determining winning assignment bids and assignment prices

Clause 7 Determination of winning assignment bids

This clause sets out the rules for determining the winning assignment bids in the assignment stage.

After an assignment round has ended, the auction manager must determine the winning assignment bids for each product or group of products and tell each assignment bidder its winning assignment bid.

The conditions that the set of winning assignment bids must meet are the following:

- only one assignment bid is selected from each bidder; and
- the frequency ranges included in any pair of winning assignment bids for a product or group of products do not overlap.

The assignment bids selected must maximise the sum of the assignment bid prices. The auction system will use a computerised pseudorandom selection process to determine winning assignment bids if more than one combination of bids meet the above criteria.

The assignment bids are used to calculate the assignment price, which is a component of the spectrum access charge imposed in relation to the spectrum licence to be issued to assignment bidders. As such, this clause relates to Division 2 of Part 6 of the determination, which fixes the spectrum access charges for issuing spectrum licences, for the purpose of section 294 of the Act. This clause is therefore disallowable under section 42 of the LA.

Clause 8 Assignment of frequencies and determination of assignment prices

This clause explains how the assignment price of each winning assignment bid is calculated in each assignment round. The assignment price is a component of the spectrum access charge imposed in relation to the spectrum licence to be issued to assignment winners. As such, this clause relates to Division 2 of Part 6 of the determination, which fixes the spectrum access charges for issuing spectrum licences, for the purpose of section 294 of the Act. This clause is therefore disallowable under section 42 of the LA.

Generally

The auction manager must determine the assignment price for each winning assignment bid in an assignment round and tell each assignment bidder its assignment price for the frequency range.

The assignment price in an assignment round will be zero if there is only one bidder in that round.

For an assignment round with more than one bidder, the assignment price for each bid is determined according to subclauses (4) to (7).

Assignment price where more than one assignment bidder in an assignment round

The assignment price must be no more than the assignment bid price;

The assignment price may be zero.

The set of assignment prices in an assignment round must be selected so that:

- (a) there is no alternative bidder, or group of bidders, who (based on their assignment bids) would pay more than any assignment winner or group of assignment winners; and
- (b) if more than one set of assignment prices satisfies paragraph (a)—the sum of the assignment prices is minimised; and
- (c) if more than one set of assignment prices satisfies paragraphs (a) and (b)—it is the solution to the formula listed in subclause (7), which applies a weighted Nearest–Vickrey–Core pricing rule.

Under the weighted Nearest–Vickrey–Core pricing rule, the assignment winner pays a price less than or equal to its bid price. There are a number of steps to determine this price. First, the Vickrey price

for each assignment winner is calculated. The Vickrey price is calculated by taking the assignment winner's bid price, and subtracting the difference between the highest value combination of assignment bids and the highest value package combination of assignment bids that can be formed without the assignment winner. If no other assignment winner or group of assignment winners has offered a bid price higher than the Vickrey price, then it is the valid assignment price. Otherwise, the price must be raised from the Vickrey price to satisfy that condition. When this price adjustment is required for a number of assignment winners, the price increase is shared between assignment winners proportional to the starting prices of their allocated lots.

As a result, the weighted Nearest–Vickrey–Core pricing rule chooses a minimum price for each bidder such that:

- (a) every bidder is satisfied—in the sense that no bidders bid more (relative to the pricing) for the assignment of an alternative frequency range option; and
- (b) prices are adjusted proportionally—bidders who win more lots have their prices increased more to satisfy (a); and
- (c) the bid price is respected—the price of a bid serves as a ceiling on proportional adjustment in (b). The remainder falls proportionally on other bidders.

Assignment winners and total assignment price

An assignment bidder who has assignment prices for winning assignment bids in an assignment round is an assignment winner.

The total assignment price, to be paid by the assignment winner, is an amount equal to the sum of the assignment prices.

Assignment prices will be rounded to the nearest thousand dollars.

The assignment price is a component of the spectrum access charge imposed in relation to the spectrum licence to be issued to assignment winners. As such, this clause relates to Division 2 of Part 6 of the determination, which fixes the spectrum access charges for issuing spectrum licences, for the purpose of section 294 of the Act. This clause is therefore disallowable under section 42 of the LA.

Clause 9 Assignment of frequencies for 900 lower products

There is only one lot of each of the 900 lower major population product and the 900 lower regional product, and thus there is only one frequency range option for these products. Therefore, this clause provides that the frequency range for these lots will be automatically assigned to the winners of these lots for an assignment price of zero. The frequency range is 890 to 895 MHz paired with 935 to 940 MHz.

Part 5—Allocation of downshift spectrum

Clause 10 Allocation of downshift spectrum

This clause allocates the downshift spectrum as follows:

- the downshift metropolitan lot is allocated to the winning bidder of the sole lot of the 900 lower major population product.
- the downshift regional lot is allocated to the winning bidder of the sole lot of the 900 lower regional product.

This allocation occurs immediately before the first assignment round. No additional spectrum access charge is applied to the downshift lot.

Clause 11 Downshift spectrum not allocated

This clause provides that:

- if the sole lot of the 900 lower major population product is unallocated, the downshift metropolitan lot is also unallocated;
- if the sole lot of the 900 lower regional product is unallocated, the downshift regional lot is also unallocated.

Part 6—Bringing the assignment stage to an end

Clause 12 Results of the assignment stage

After the end of all assignment rounds, the auction manager must tell each assignment winner the frequency ranges assigned to:

- lots of a product allocated to the bidder in the primary stage and the secondary stage;
- the set-aside lots if the assignment winner is a set-aside participant;

and any assignment price for the frequency ranges assigned.

The frequency ranges will be assigned to the allocated lots on an aggregated basis, not separately for lots allocated in the primary stage or secondary stage, and set-aside lots. For example, if an assignment bidder has been allocated 2 lots of the 900 upper regional product in the primary stage and elected to take up its set-aside lot in the 900 upper regional product, a frequency range will be assigned to all 3 lots as a contiguous block, such as 895 to 910 MHz paired with 930 to 945 MHz. The bidder will not be assigned two separate frequency ranges, one for the set-aside lot and another for the lots allocated in the primary stage.

If a downshift lot has been allocated to an assignment winner, the auction manager must tell the assignment winner they have been allocated a downshift lot.

Clause 13 End of the assignment stage

The assignment stage is complete when the auction manager has notified all assignment bidders of the results of every assignment round, and, if relevant, notified an assignment winner of allocation to it of a downshift lot.

SCHEDULE 5—Payment of balance of the winning price greater than zero, and issue of spectrum licences

Schedule 5 describes how winning bidders can pay the winning price for the spectrum won at auction; that is, how they can pay the spectrum access charge for a spectrum licence. Section 77 of the determination addresses where a winning bidder's eligibility payment is sufficient to issue a licence without further payment. Section 78 of the determination, using Schedule 5, addresses where a winning bidder must make further payment to be issued a licence.

The balance of the winning price is part of the spectrum access charge imposed in relation to the spectrum licence to be issued to winning bidders. As such, this Schedule relates to Division 2 of Part 6 of the determination, which fixes the spectrum access charges for issuing spectrum licences, for the purpose of section 294 of the Act. This Schedule is therefore disallowable under section 42 of the LA.

Part 1—Application and interpretation

Clause 1 Application of Schedule

This Schedule applies to the payment of the balance of the winning price by a winning bidder if it is greater than zero.

Clause 2 Interpretation

This clause defines the term *winning bidder* as it applies to the Schedule.

Part 2—Payment of winning price

Clause 3 Payment of balance of winning price

This clause outlines the actions:

- the ACMA must take to notify winning bidders of their payment options;
- winning bidders must take to pay their winning price in full (i.e. to pay the balance of their winning price in one sum).

First, the ACMA must notify the bidder of its winning price, of the balance of the winning price (taking into account any eligibility payments), that the balance of the winning price must be paid in full, and the payment deadline. This deadline must be at least 20 working days after the date of the notice.

If the notice contains a material error, the ACMA must give the winning bidder a revised notice.

The ACMA must give a notice to a winning bidder no later than 1 June 2024, which is one month before the date of licence commencement specified in the marketing plan. The ACMA does not presently intend to give notices until close to that time, meaning payment of the balance of the winning price will not be required until close to the commencement of spectrum licences. The ACMA may consult with winning bidders about the appropriate time to give the notice.

Part 3—Issue of spectrum licences

Clause 4 Issue of spectrum licences

This clause specifies when the winning bidder is entitled to be issued a spectrum licence for the spectrum allocated to them at auction.

If the winning bidder pays the balance of the winning price in accordance with the notice in subclause 3(1), it is entitled to be issued a spectrum licence for:

- the lots allocated to the bidder, and the frequencies assigned to those lots other than the downshift lots;
- if it was allocated the downshift metropolitan lot, the downshift metropolitan lot;
- if it was allocated the downshift regional lot, the downshift regional lot.

The downshift lots will be issued as separate spectrum licences to other licences because the marketing plan specifies they will have a different expiry date.

Clause 5 Default

This clause specifies the consequences if a winning bidder does not pay the balance of the winning price in accordance with the notice under subclause 3(1):

- the relevant spectrum licences are not allocated to the bidder;
- allocation of spectrum licences to other bidders is not affected;
- the spectrum that would have been included in the spectrum licence allocated to the bidder is treated as unallocated under section 80.

It is not an offence, or subject to a civil penalty, to default on payment on the balance of the winning price. However, under section 298 of the Act, the spectrum access charge may be recovered as a debt due to the Commonwealth. It is also a condition of a spectrum licence that the licensee must meet all obligations (if any) to pay spectrum access charges (paragraph 67(b) of the Act).